

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; or major increase in costs to consumers or others; or significant adverse effect. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Appendix Amended

In 41 CFR Chapter 101, this temporary regulation is listed in the appendix at the end of Subchapter E.

Note.—Supplement 1 to FPMR Temporary Regulation E-74 is filed with the original document, and its text does not appear in this volume.

Dated: July 19, 1982.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-23044 Filed 8-23-82; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80-170; FCC 82-357]

Modifications of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite Corporations.

AGENCY: Federal Communications Commission.

ACTION: Report and Order (Policy statement).

SUMMARY: This Report and Order modifies the Commission's authorized user policy governing who may lease satellite circuits from the Communications Satellite Corporation (Comsat). The Order requires Comsat to lease International Telecommunications Satellite Consortium (INTELSAT) satellite capacity to carrier and non-carrier users at appropriate U.S. earth stations operating with INTELSAT satellites. The Order also extends to Comsat the opportunity to become an international service carrier offering

end-to-end communications services; but requires it to engage in such activities through a corporate subsidiary separate from its INTELSAT operations. This action was taken to remove an unnecessary restriction upon Comsat which deprives end users of the benefit of Comsat service. The proposed rule in this proceeding was published in the *Federal Register* on May 20, 1980, 45 FR 33662.

DATE: Effective August 24, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John F. Copes, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202-632-4047).

Adopted: August 5, 1982.

Released: August 19, 1982.

In the matter of proposed modifications of the Commission's authorized user policy, concerning access to the international satellite services of the Communications Satellite Corporation, CC Docket No. 80-170.

1. By Notice of Proposed Rulemaking in *Aeronautical Radio, Inc., et al.*, 77 FCC 2d 535 (1980) (hereinafter referred to as the Notice), we instituted a proceeding to review the policy we had announced in *Authorized Entities and Authorized Users*, 4 FCC 2d 421 (1966) (hereinafter referred to as the *Authorized User* decision), *recon. granted in part*, 6 FCC 2d 593 (1967) (hereinafter *Authorized User Reconsideration*), limiting the Communications Satellite Corporation (Comsat), except in "unique or exceptional circumstances," to the role of a "common carrier's common carrier" or "carrier's carrier." In our Notice we put out for public comment a specific proposal for an amended policy and requested interested persons to suggest such alternatives and variations on the proposal as appeared to them most advantageous to the public interest.

2. In our Notice we tentatively concluded that changing circumstances had cast doubt on the continued validity of our 1966 *Authorized User* policy and that, under current conditions, the public interest would be better served by allowing Comsat to offer service directly to the public. We therefore proposed to lift the policy constraint that now limits Comsat primarily to the role of a "carrier's carrier." However, to insure that Comsat would not use its position in INTELSAT and INMARSAT to deal unfairly with its competitors, we also proposed to condition Comsat's offer of direct public services upon its

implementation of the structural and accounting changes we had proposed in the *Comsat Study, Communications Satellite Corporation*, 77 FCC 2d 564 (1980). That is, we proposed to require Comsat to offer public services through a separate corporate subsidiary and to deal with all carriers, including its separate subsidiary, on just and reasonable terms.

3. We also proposed to reconsider our "composite-rate" policy—under which international rates are set by averaging cable and satellite transmission costs—to allow Comsat to file rates for service based solely on satellite-transmission costs. We sought through these changes to increase competition between the cable and satellite mediums. Finally, we proposed to remove the Commission from the role of prescribing the loading of cable and satellite facilities, and to leave that function to the operation of market forces. We stated that we believed our proposed new policy, with the safeguards we built into it, would serve the public interest and advance the goals of the Satellite Act to enhance competition and assure that users realize the economies of satellite technology.

4. In response to our Notice we received comments and reply comments from Comsat, American Telephone and Telegraph Company (AT&T) and the following international record carriers (IRCs):¹ ITT World Communications Inc. (ITTWC), RCA Global Communications, Inc. (RCAGC), TRT Telecommunications Corporation (TRT) and Western Union International, Inc. (WUI). We also received comments and reply comments from the following domestic and other U.S. carriers: American Satellite Company (ASC), Hawaiian Telephone Company (HTC), and Southern Pacific Communications Corporation (SPCC) (SPCC did not file reply comments). We also received comments and reply comments from the following U.S. governmental agencies and departments: The Department of Defense (DoD) on behalf of itself and the other federal executive agencies, the National Telecommunications and Information Administration of the Department of Commerce (NTIA) and the Department of Justice. In addition, we received comments from several large users of international communications services: Aeronautical Radio, Inc. (ARINC) (which also filed

¹ The term international record carriers refers to a group of carriers which offer telegraph and other record (non-voice) communications services. See also para. 11, *infra*. AT&T and the IRCs together comprise what is referred to as the United States international service carriers (USISCs).

reply comments), Societe Internationale des Telecommunications Aeronautiques (SITA) and Dow Jones and Company (Dow Jones). Finally, we received comments from the American Communications Association (ACA) and reply comments from Securities Industry Automation Corporation (SIAC).² The comments of the parties are summarized in an Appendix to this Report and Order.

I. Summary of Decision

5. We have decided to change our prior policy by removing the constraint limiting Comsat to the role of a carrier's carrier and to permit it to serve both carrier and non-carrier entities. We shall condition any authorization to Comsat to provide end-to-end services upon final implementation of the requirements that we impose today in a separate order in the *Comsat Structure* rulemaking, *Communications Satellite Corporation*, FCC 82-372, — FCC 2d — (adopted August 5, 1982). Those requirements, which essentially seek to segregate Comsat's INTELSAT/INMARSAT monopoly activities from its other regulated and unregulated activities, will facilitate the implementation of our new *Authorized User* policy by allowing us to monitor Comsat's performance and assure that it deals fairly with its competitors and customers. Consistent with our new policy, we have also decided to make our composite-rate policy discretionary and to allow all carriers either to file separate satellite and cable rates or to continue to file composite rates as they deem appropriate. We have also decided that, insofar as possible, we shall limit our role in prescribing the loading of cable and satellite facilities.

² On April 19, 1982, WUI filed a Motion to Supplement the Record in this proceeding by which it asked us to waive Section 1.415(d) of our Rules and Regulations, 47 CFR 1.415(d) (1981), to accept an unauthorized pleading styled "Supplemental Comments." In its Supplemental Comments, WUI seeks (1) to have us take notice of the presiding law judge's Initial Decision in *WUI v. Comsat*, CC Dockets Nos. 81-353, 354, 355 and 356, 81-D-83 (released December 10, 1981), (2) to reargue its view that the Satellite Act bars Comsat from providing service to non-carrier users and (3) an immediate grant of its request for "cost-based access" to Intelsat. On May 4, 1982, ARINC filed an Opposition to the WUI Motion and a Response to WUI's Supplemental Comments. On May 28, 1982, Comsat filed a petition for leave to respond to WUI's Supplemental Comments. We are aware of the Initial Decision in CC Dockets Nos. 81-353, *et al.*, and have it under review. With respect to WUI's other two requests, we believe that its supplement adds nothing to the views it has already expressed in this proceeding. We do not find that WUI has shown good cause to waive § 1.415(d). We shall, therefore, deny WUI's request for waiver of our Rules and dismiss its Motion and the responsive pleadings associated therewith.

6. Our new policy will permit Comsat to serve non-carrier entities in two ways. First, it will permit non-carrier entities access to Comsat's INTELSAT basic transmission facilities. In this role Comsat will continue to operate as it does today, providing service beginning or ending at the U.S. INTELSAT earth station. However, both carriers and non-carriers will be able to deal directly with Comsat under the same terms and conditions.

7. Second, we have determined, as a matter of policy, to permit Comsat to enter the end-to-end service market through a corporate affiliate separate from its INTELSAT/INMARSAT functions. Should Comsat elect to enter this market, it will function as any other international carrier. In this role it may provide based-channel, switched or any other international service directly to end users. Prior to entering the end-user market, Comsat must obtain the necessary authorization and file tariffs as required by the Communications Act.

II. Background

8. In 1965, the year Comsat initiated commercial communications satellite service, the United States international communications industry was composed of relatively few common carriers, with a sharp separation between types of services provided by the different carriers. As a result of our TAT-4 decision, *American Telephone and Telegraph Company*, 37 FCC 1151 (1964), the industry was divided into voice services, provided principally by AT&T, and record services, provided by the IRCs. In 1966 the principal international voice carriers were AT&T and a series of regional telephone carriers. In 1966 the voice carriers collectively earned revenues of \$146.2 million, of which \$116 million (or 79 per cent) was attributable to AT&T. By far the dominant service of the voice carriers in 1966 was message telecommunications service (MTS) or ordinary long-distance telephone service, accounting for approximately \$106.8 million or 92 per cent of AT&T's international revenues. Of the remaining voice services, the most important was voice-grade private-line or leased-channel service.³

9. The second category of carriers—the IRCs—offered basically three non-voice or data services in 1966 which collectively accounted for 86.0 per cent of their revenues: public message "telegram" service (PMS) (which

accounted for 39 per cent of revenues), telex,⁴ (which accounted for 28.1 per cent of revenues) and a variety of leased-channel services (which accounted for 18.9 per cent of revenues). The IRCs in 1966 earned total revenues of \$121.5 million, or slightly more than AT&T earned from its overseas operations. Of the five principal IRCs, three dominated the record market in 1966: RCAGC, ITTWC and WUI, who together accounted for \$116.6 million or 96 per cent of total industry revenues.

10. Comsat was created under the Satellite Act as the chosen instrument of the United States government to build and operate a global communications satellite system. Although Comsat was created as a private corporation and began to plan and build the satellite system on its own, it was always intended that the resulting system would be operated on a cooperative basis by the various governments of the world. Indeed, on August 20, 1964, the United States and 10 other countries signed an Executive Agreement entitled "Agreement Establishing Interim Arrangements for a Global Communications Satellite System" (Interim Arrangements), 15 U.S.T. 1705, T.I.A.S. No. 5846, 544 U.N.T. 26, effective August 20, 1964, to form the International Telecommunications Satellite Consortium (INTELSAT) which took over from Comsat the ownership of the system then under development. Besides being the U.S. representative to INTELSAT, Comsat served under contract as Manager of the system.

11. The *Authorized User* proceeding arose under the language of the Communications Satellite Act of 1962, 47 U.S.C. 701-744 (1976), to determine the extent to which Comsat, as a matter of law, could be authorized to provide communications facilities and services to users other than communications common carriers and the extent to which, as a matter of policy, we would authorize such direct service. On May 28, 1965, Comsat filed its Tariff FCC No. 1 (now called Tariff No. 101) under which it offered satellite circuits only to "communications common carriers." In the transmittal letter accompanying its tariff, Comsat noted that it stood ready to supplement its tariff at any time we designated entities other than the existing carriers as being eligible to take service directly from Comsat. In April,

³ The terms "leased channel" and "private line" are interchangeable, both referring to provision of a dedicated transmission path between two or more specified points during a set period and available 24 hours a day for the exclusive use of the customer.

⁴ Telex, also known as teletype-exchange service, refers to a customer-to-customer, switched, record service operating at 50 baud over the public telegraph network and characterized by a two-way or conversational capability. Telex was first offered between the United States and overseas points in 1949.

May and June of 1965, we received a number of specific requests from non-carrier telecommunications users for information on how they might be designated to take service from Comsat. Accordingly, on June 16, 1965, we issued a Notice of Inquiry to examine the issue on a systematic basis, but allowed Comsat to offer service to carriers pending the outcome of that proceeding.

12. After receiving comments from a number of parties, we issued our *Authorized User* decision. Briefly, we found that, as a matter of law, Comsat is not barred by the language of the Satellite Act or its legislative history from providing satellite service directly to non-carrier entities. 4 F.C.C. 2d at 436. However, we also found that it did not follow that Comsat was therefore free to engage in direct public operations without restriction. On the contrary, we concluded that "it was the intent of Congress that the Commission could authorize Comsat to afford access to the satellite system by noncarrier entities upon a proper finding that such access would serve the public interest and comport with the purposes of the Satellite Act." *Id.* at 428. We found that Congress

did not establish rigid or detailed criteria for regulation of new and dynamic techniques of communication * * *. Rather, Congress left to the informed discretion of the Commission the establishment of the methods, procedures, and particular criteria for authorization of provision of services * * * to other carriers and the general public. *Id.* at 426 [citations omitted].

We also found that any determination as to which entities would be allowed to take service from Comsat should not be frozen for all time and that we are "to make [our] judgment [as to who may take service from Comsat] based upon an evaluation of the often changing situation and the Congressional concern with the public interest * * *." *Id.* Our 1966 order thus recognized that changing circumstances would require us to review our *Authorized User* policy to assure that it continues to advance the policy of the Satellite Act.

13. In *Authorized User* we were concerned that one carrier, AT&T, dominated the market, alone accounting for nearly 50 per cent of total overseas communications revenues. Indeed, two years earlier, in the *TAT-4 decision*, *supra*, we had acted to restrain AT&T because we feared that it would continue to grow until it so dominated the market that none of the other carriers could compete. In that case, in return for granting AT&T's application to build a fourth transatlantic telephone cable (TAT-4), we restricted AT&T's provision of alternate voice-data (AVD)

services⁵ to those specific services then offered and to the customers it then served. We noted that in the six years AT&T and the IRCs had offered competitive AVD service, the IRCs had not managed to lease any circuits. We noted that AT&T's overseas revenues were less than 1 per cent of its total revenues and that AVD service represented less than 10 percent of its overseas revenues. For the IRCs, however, we noted that record services represented 100 per cent of their revenues, and that in 1963 nearly all of that was from PMS. We also noted that virtually all of the AVD circuits in use were used for record purposes. We thus concluded that AVD service represented a serious threat to the IRCs' business, but that AT&T would not feel the loss of AVD revenues. We thus limited AT&T to the number of AVD circuits it then had in service and directed it to sell circuits in its cables to the IRCs for their use in providing AVD service.

14. We noted in the *Authorized User* decision that in the two years that followed our TAT-4 decision, the IRCs had managed to lease 200 voice-grade leased-channels (of which 179 were leased to U.S. government agencies) and 400 telegraph-grade (of which 68 were leased to the government) and that such service appeared to be the fastest-growing segment of their business. We thus were concerned, as we had been in 1964, that a threat to the IRCs' leased-channel revenues might be a threat to their continued viability. We regarded Comsat's offering of leased channels directly to users as such a threat. We were aware that Comsat, as the sole U.S. representative in INTELSAT, was the only carrier at that time with access to satellite circuits. We also believed that satellite circuits would be so much cheaper than cable circuits that whoever offered satellite-based leased channels would capture virtually all the leased-channel market. We therefore concluded that it would be unfair to allow Comsat, on whom the carriers were dependent for satellite circuits, to compete with them for leased-channel customers.

15. We noted further, that Comsat had never proposed to offer any service other than leased channels and that its offer of direct service would, therefore, be of benefit only to a small portion of overseas communications users. We anticipated that if Comsat were able to lure away the IRCs existing leased-channel customers, the IRCs would be forced to transfer their idled, expensive

cable circuits to other services such as telex and PMS and that that might well cause an increase in the rates for those services. We therefore found that allowing Comsat to offer leased-channel services directly to users would "siphon" off the most profitable parts of the IRCs' business and would thus benefit only those few customers with enough traffic to justify the cost of such a circuit to the detriment of the vast majority of users. Such a result, we believed, would be undesirable and would frustrate the policy of the Satellite Act to extend the economies of satellite technology to all users.

16. We thus concluded that we could best fulfill our obligations under the Satellite Act by adopting a policy which generally limited Comsat to the role of a carrier's carrier, providing service directly to end users only in "unique or exceptional circumstances." 4 FCC 2d at 435. We did not set forth any specific procedures for dealing with requests by Comsat to provide direct service. Rather, we indicated that we would view authorization of direct service as an exception to the rule which we would address on a case-by-case basis. However, we did indicate some circumstances where we might look favorably upon a Comsat request for such authority. For example, we noted that service to the public might be justified by "a refusal or failure of the terrestrial carriers to provide, upon reasonable demand, satellite leased channel facilities." *Id.* We also noted that we wished to promote the development of the satellite medium and that under appropriate circumstances we would authorize Comsat to offer new, satellite-based services which would advance those goals. Finally, although we noted that the decision to grant exceptions to the carrier's carrier policy was dependent upon the nature of the service rather than the identity of the potential customer, we acknowledged that the U.S. government has a special status under the Satellite Act which we must take into consideration in acting upon requests from Comsat for authority to offer service directly to an agency of the government. *Id.* at 430.⁶

⁶ We found, however, that unlimited dealings between Comsat and the government would likely do severe harm to the terrestrial carriers and was, therefore, not consistent with the overall purpose of the Satellite Act to maintain competition among the carriers. We concluded that the government could get service from Comsat whenever its unique national-interest needs could not be met effectively under the carrier's carrier approach. 4 FCC 2d at 431.

⁵ AVD service refers to the provision of a voice-grade leased channel which the customer may use alternatively for the transmission of voice or data communications. AVD has become the most important of the leased-channel services.

17. Even though we believed Comsat should be limited in its direct operations, we were aware that our policy would neutralize competition between cable and satellite transmission and that this might have certain drawbacks. We were particularly concerned that the carrier's approach might not assure realization of the admonition in the Satellite Act that users enjoy the "economic benefits" (i.e., lower costs) of satellite circuits. We were troubled that our policy might not give the carriers an incentive fully to exploit the satellite medium or to pass the lower costs through to their customers and that the end users might, therefore, not receive the benefit of the substantially lower costs we expected from satellite communications. To assure that this did not happen, we ordered the existing carriers to review their tariffs and to file reductions in charges for all leased-channel services which would reflect their satellite savings. We noted that, in the early years, satellite service would not be available to all overseas points, but that implementation of the *Authorized User* policy would reduce the costs of service and allow carriers to "reduce charges to many points to which satellite circuits are not [in 1966] available." *Id.* at 435.

18. On reconsideration, *Authorized User Reconsideration*, *supra.*, we generally affirmed our initial policy statement with one minor adjustment. The General Services Administration had argued that the Satellite Act intended to allow the Government to take service from Comsat without restriction. On reconsideration, we affirmed our initial policy determination that the government occupies a special position because of its unique defense and governmental roles. Our reconsideration order, however, made clear that the Director of Telecommunications Management (DTM) (now, the Assistant Secretary of Commerce, National Telecommunications and Information Administration), as the official in the Executive Branch responsible for overseeing the government's use of telecommunications, would be the "focal point" for our inquiry into the conditions under which Comsat should offer service directly to the government. 6 FCC 2d at 594.

19. Thus, while we acknowledged that the government's use of Comsat's services would be determined by the requirements of the national interest, and recognized that such determinations were peculiarly the responsibility of the Executive Branch (DTM), we again

declined to permit unrestricted direct dealings between Comsat and the government. We based our decision on the fact that the government was the largest user of leased-channel services and that permitting the government to deal directly with Comsat would weaken the existing carriers. Rather, we stated that the government's use of Comsat satellite services would be governed by the "national interest" as defined in the first instance by the DTM, and therefore waived the general procedural showings applicable to other non-carrier users we had set forth in our 1966 policy. *See id.* at 594-5. *See also* 4 FCC 2d at 436. That is, in the case of the Government, we would not require Comsat to show that service was not available from other carriers or that there were unique and exceptional circumstances.

20. We otherwise denied attempts to expand or contract our original policy determinations. Comsat had requested us to specify the situations where we would allow it to offer service directly to the public. Comsat was concerned that the carrier's carrier requirement—and particularly what it referred to as our "composite rate"⁷ policy—would so thoroughly integrate satellites and cables that the carriers would have no incentive to promote the satellite medium or services that could be offered only by means of satellite. For this reason, it sought assurance that we would allow it to introduce and market satellite services if the other carriers delayed. While we recognized Comsat's concern, we adhered to our basic carrier's carrier policy. We thus decided to retain the carrier's carrier approach and composite rates—but stated that we did not believe rate compositing would prevent a carrier from filing a cable-only or satellite-only rate where a service could be provided only by means of one medium.⁸

⁷ Our 1966 order, *see* para. 17, *supra.*, had not used the term "composite rates." Rather, we directed the carriers to reflect the cost savings of satellite service on all routes, whether or not satellite service was available on a particular route. The carriers and Comsat had interpreted our order as requiring them to take an average of the costs of cable circuits and satellite circuits and to tariff the resulting "composite" rate.

⁸ The policy of composite rates became firmly fixed that year in the so-called 30 Circuits Case, *ITT World Communications Inc., et al.*, 6 FCC 2d 511 (1967). In that case Comsat and the IRCs had sought to provide DOD leased-channel service in the Pacific. Comsat had bid a monthly half-circuit rate less than one half that of the IRCs' (\$4,200 vs. \$10,000). We denied Comsat permanent authority to provide the service. Instead, we authorized ITTWC, RCAGC, WUI and HTC to provide the 30 circuits and ordered them to file a "composite" of cable and satellite rates of \$7,100 per month.

21. Our *Authorized User* policy has remained in effect since 1966. During this period, Comsat has provided U.S. communications common carriers a variety of international satellite-transmission services. Comsat's primary role has been as a provider of INTELSAT satellite transmission capacity to other carriers. Comsat's tariff covers the provision of a satellite half circuit⁹ between a U.S. earth station and the INTELSAT satellite. Comsat's service may be further broken down into what is known as the space segment, which Comsat obtains from INTELSAT, and the earth station segment, which refers to use of an appropriate U.S. earth station. To complete the communications link, the carrier must make its own arrangements with a U.S. domestic carrier for connecting circuits between the earth station and the carrier's operating center and with a foreign telecommunications entity for the foreign satellite half circuit and any necessary connecting links within that country.

22. In recent years, we have begun to reconsider our prior policies. In 1978, for example, we had occasion to review the policy under which Comsat has provided international satellite television-transmission service in the so-called *SIN* proceeding. *Spanish International Network, Inc.*, 70 FCC 2d 2127 (1978), *appeal pending sub nom. ITT Worldcom v. FCC*, Case No. 79-1046 (D.C. Cir., filed January 12, 1979) (hereinafter *SIN*). *SIN*, a television network which purchases Spanish-language television programming from abroad for distribution to affiliated U.S. television stations is a relative large user of INTELSAT television transmission service. *SIN* objected to our so-called "carrier of the week policy" under which INTELSAT television service was offered in the U.S. by AT&T and several of the international record carriers (IRCs) on a rotational basis.¹⁰ *SIN* asserted that the

⁹ A half circuit is a two-way communications link between an earth station and an INTELSAT satellite. To obtain a full circuit, one combines a half circuit from one earth station with a half circuit from any other earth station operating with the same satellite.

¹⁰ The carrier of the week arrangement derived from a decision we made in 1965 when we first considered applications by the carriers to use the Early Bird satellite. *American Telephone and Telegraph Co., et al.*, 38 FCC 1315. ITTWC had argued that AT&T should not be allowed to provide television service, which it felt was a record service barred to AT&T under our TAT-4 decision. *See* 37 FCC 1151 (1964). We decided that until we could consider ITTWC's arguments we would allow all the applicants, including AT&T, to provide service on a rotational basis. Later, we allowed the arrangements to continue because they appeared to allow good-quality service.

carriers add nothing to television service and that requiring their interposition merely increased its cost to users.

23. SIN argued that television service, which can at present be offered internationally only by means of satellite, represents a "unique or exceptional circumstance" within the meaning of our 1966 *Authorized User* policy and therefore requested designation as an authorized user to take service directly from Comsat. We held, however, that television service was not "unique" as we had used the term in our policy, since the carriers had quite successfully been offering the service since 1966. We did find, however, that SIN had made a sufficient showing for us to undertake a rulemaking to examine whether we ought to waive our unique and exceptional circumstances test as it applies to television-transmission service. See *Spanish International Network*, Notice of Proposed Rulemaking, FCC 78-515, 43 FR 33, 943 (released July 31, 1978).

24. After receiving comments in that rulemaking from a variety of interested persons, we concluded that the time had come to end our carrier of the week policy and to place those wishing to provide international television-transmission service into competition. 70 FCC 2d 2127. We also decided to allow Comsat to provide television service directly. In reaching our conclusion, we noted our finding in *Authorized User* that the Satellite Act does not bar Comsat from providing service to non-carrier users. We also noted the broad discretion the Satellite Act grants us to decide the scope of Comsat's operations. In the exercise of our discretion, we concluded that television service was an area where the public interest would be served by allowing Comsat to provide direct service. *Id.* at 2148. In taking that action, we questioned the validity of the assumption underlying our 1966 *Authorized User* policy that Comsat was intended primarily to be a carrier's carrier, noting that nothing in the Satellite Act requires such a holding, but concluded that we did not need to reach that question in the *SIN* case since our modified policy there was limited to one service. See *id.* at 2135.

25. On October 25, 1979, ARINC, and on December 5, 1979, the Secretary of Defense on behalf of DOD and other federal agencies filed Petitions for Declaratory Ruling or Rulemaking requesting us to designate the respective petitioners as authorized users under our 1966 policy so that they would be eligible to obtain satellite service

directly from Comsat. As a non-carrier user,¹¹ ARINC sought designation as an authorized user on the grounds that the services it provides the airlines are so exceptional or unique that they must be tailored to meet the needs of the particular customer; that its service cannot be adequately provided within the terms and conditions of the carriers' general public tariff offerings; and that, irrespective of exceptional circumstances, allowing it to take service directly from Comsat would serve the public interest and improve the international communications industry by injecting an additional competitive force such as we approved in our *SIN* decision. DOD sought a determination that DOD and other governmental agencies are eligible under the Satellite Act to take service from Comsat without limitation and restriction and that our 1966 *Authorized User* policy limiting direct service to unique national-interest situations was a misreading of Congressional intent.

26. We received extensive comments from interested persons both in favor of and in opposition to the requested relief. After reviewing the comments, we concluded not to rule on the petitions. While we expressed no opinion on the merits of the parties' arguments we found the procedural device of a declaratory ruling too narrow to serve as a vehicle for what we felt was a much broader question. As a result, we concluded that the best course would be to dismiss without prejudice the DoD and ARINC Petitions for Declaratory Ruling and to grant ARINC's alternative request to institute a rulemaking.

27. In taking this action, we made it clear that our dismissal was not intended to indicate that we regarded the issues raised by the ARINC and DoD petitions as unimportant. We merely found that they were too broad, and their implications too far-reaching to be disposed of in an *ad hoc* review of the petitions. We noted that we had become increasingly convinced in recent years that the time had come for a comprehensive review of our 1966 *Authorized User* policy. Further, we noted that underlying the ARINC and DoD requests were more general questions of Comsat's authority to deal directly with particular classes of potential users and the eligibility of the

international carriers to deal directly with INTELSAT and that those issues should be included in our policy review.¹²

28. Accordingly, on April 22, 1980, we adopted the Notice in this proceeding. In that Notice we tentatively concluded that the economic conditions in the international market which had prompted our restrictive policy in 1966 have changed and that we can better advance the goals of the Satellite Act by allowing Comsat to deal directly with end users. We noted that our 1966 *Authorized User* decision had found that the Satellite Act permits Comsat to provide service to users other than carriers and that our decision to limit Comsat to the role of a carrier's carrier was a policy decision. We hoped through our proposed new policy to add an experienced and well financed carrier to the international market so as to increase customer choice and assure that rates for international services accurately reflect any cost savings attributable to satellite transmission. We also noted that introducing Comsat as a competitor would increase competition between the cable and satellite mediums. We hoped that this would give Comsat a stronger incentive to keep satellite rates low and to introduce service innovations. However, because we recognized that we must not allow Comsat to misuse its position in INTELSAT and INMARSAT to the detriment of its competitors, we proposed to require Comsat to restructure its operations and to provide public services through a separate corporate subsidiary.

29. We found in our 1980 Notice that Congress in the Satellite Act gave this Commission wide discretion to decide who would deal directly with Comsat and that our proposal to increase competition in the international market fell within that discretion. Since the release of our Notice, Congress enacted the Record Carrier Competition Act of 1981 (RCCA), P.L. 97-130, 95 Stat. 1687 (enacted December 29, 1981), to amend

¹² See, e.g., Western Union International, Inc., Petition for Declaratory Ruling seeking "cost-based access" to INTELSAT, File No. I-S-P-7, filed June 9, 1980. We also indicated in our Notice herein that we wished to review our policy on the ownership and operation of U.S. earth stations. We stated, however, that we would not include the earth-station question in our *Authorized User* policy review but would institute an appropriate separate proceeding. We have today, in a companion order initiated a comprehensive review of our earth station ownership policy, including specific proposals for modification which have been proposed by various interested parties. See para. 102, *infra*, and our Notice of Proposed Rulemaking in Earth Station Ownership, FCC 82-373. — FCC 2d —, (adopted August 5, 1982).

¹¹ ARINC is a joint venture of the air-transport industry organized to provide its member airlines' communications needs on a not-for-profit basis. Because of its non-profit status and the fact that the services it provides are limited to the business communications of its members, we have treated ARINC as a user group rather than a common carrier. ARINC, therefore, would not generally be eligible to be designated an authorized user under our 1966 policy.

Section 222 of the Communications Act. In that Act, Congress instructed us to "promote the development of fully competitive domestic and international markets in the provision of record communications service and facilities (including terminal equipment) the variety and price of which are governed by a fully competitive marketplace." *Id.* We believe the change in our 1966 *Authorized User* policy we adopt today is not only permitted under the language of the 1962 Satellite Act, but that it is also consistent with this congressional policy in favor of competition enunciated in the RCCA.

III. Discussion

30. After reviewing the comments of the parties and the other information before us, we have decided to make final the authorized-user policy proposed in our Notice in this proceeding. This conclusion follows a thorough analysis of our 1966 decision, the results of that decision and the current structure of the industry. As a result of this review, we are now convinced that our current policy no longer serves the public interest. Our decision in 1966 to restrict Comsat primarily to the role of a carrier's carrier was a policy decision based on our view of the facts then pertaining in the international communications industry. However justified that policy may have been at the time, we believe it is now too restrictive and unreasonably denies the public the benefit of Comsat's service and expertise.

31. We conclude that the public interest will now be better served by relaxing the prior, artificial restraints on Comsat in two respects: (1) We shall allow non-carrier users to lease basic satellite transmission capacity directly from Comsat at an appropriate earth station under terms and conditions identical to those applicable to carrier users and (2) we shall allow Comsat, through a corporate subsidiary separate from the unit that carries on its INTELSAT/INMARSAT functions, to become an international communications carrier to provide end-to-end service. We shall also grant carriers discretion to file separate satellite-only or cable-only tariff charges for any service, or to continue to composite their satellite and cable costs in setting their rates.

32. Our decision today is part of an overall review of our international policies which we began in 1979.¹³ As

part of this review, we are also today initiating two inquiries that focus on other aspects of the structure of the U.S. international satellite system. In these inquiries we shall address our earth-station-ownership policy and the conditions under which carriers other than Comsat may have access to the INTELSAT space segment. We also have pending a rulemaking reviewing our 1964 policy decision restricting AT&T's international operations to voice services. *See Overseas Communications Services*, 84 FCC 2d 622 (1980). In each of these cases we are addressing a similar issue: should we remove existing restrictions on the use of, or access to, basic facilities. In the case of our current *Authorized User* restrictions, we believe there is a compelling case that they be removed. As with all our agency rules, where we cannot find a need for their perpetuation, we shall remove them. Indeed, we have a public interest obligation to do so.

33. Several of the parties filing comments in this proceeding suggest that the *Authorized User* policy has, but virtue of the fact that it has continued in existence for 16 years, acquired additional legitimacy. The length of time a policy remains in effect does not confer additional status to it. A policy remains valid only so long as the reasons for its promulgation remain. Indeed, we have an affirmative duty to re-examine our policies in light of changed circumstances to determine whether they still further the public interest. *See Geller v. FCC*, 610 F.2d 973 (D.C. Cir. 1979). As we noted in our Notice of Proposed Rulemaking in *Domestic Satellite Earth Stations*, 81 FCC 2d 304, 311 (1980): "The Commission's assessment of how the public interest will be served can change with time and changed circumstances may, in fact, necessitate an altered regulatory response." We believe the time has come for a new regulatory response in the international satellite-communications market.

A. Legal Issues

34. In response to our Notice, the IRCs and AT&T argue that the Satellite Act

does not permit us to authorize Comsat to serve non-carriers directly. We do not agree. There is no language in the Satellite Act which purports to bar Comsat from providing service to non-carrier users or that limits it to the role of a carrier's carrier. Indeed, as we found in 1966, the statute expressly allows Comsat to offer service to users other than carriers. Section 305 of the Satellite Act, in setting out the powers of the satellite corporation (Comsat), states that Comsat is authorized to furnish channels of communication to "United States communications common carriers and to other authorized entities, foreign and domestic * * *." 47 U.S.C. 735(a)(2) (1970). From this language alone, it is clear that Comsat may offer service to entities other than carriers. Section 305 itself elaborates on the question, in subsection 305(b)(4), where it states that Comsat is authorized to "contract with authorized users, including the United States Government, for the services of the communications satellite system * * *." 47 U.S.C. 735(b)(4). It is therefore clear that Comsat may provide service to non-carriers such as the U.S. government. In more general terms, in connection with setting out the reasons Congress elected to create Comsat, Section 102(c) of the Satellite Act states that "[i]t is the intent of Congress that all authorized users have nondiscriminatory access to the [satellite] system * * *." 47 U.S.C. 701(c).

35. We thus believe it is clear from the plain language of the Satellite Act that Congress did not bar Comsat from providing service directly to end users. The carriers do not make clear why they believe we should read the terms "users" and "entities" as synonymous with "carriers"; they simply assert that the Satellite Act permits Comsat to serve only carriers. We note that we considered, and rejected, the same argument in our original *Authorized User* decision. *See* 4 FCC 2d at 423-4. AT&T had there argued that the term "entities" was used to describe foreign governmental or private telecommunications providers we might license to operate in the United States. We, however, noted that there was no reason why those entities would not fall within the scope of the term "carriers." Further, we noted that AT&T's argument ignores the fact that Section 305(b)(4) of the statute plainly authorizes Comsat to serve the U.S. government, a non-carrier, and that we are permitted to authorize other entities foreign and domestic as well. The fact that the Act does not contain an express prohibition on Comsat public operations and does not

¹³ See, e.g., *American Telephone and Telegraph Company (DATAPHONE)*, 75 FCC 2d 682 (1980); *Western Union International, Inc., et al., (Datel)*, 76 FCC 2d 166 (1980), both *aff'd sub nom.* *WUI v. FCC*,

673 F. 2d 539 (D.C. Cir. 1982), *International Record Carriers' Scope of Operations (Gateway Expansion)*, 76 FCC 2d 115 (Docket No. 19660) (1980), *Interface of International and Domestic Telex and TWX Networks (International Telex Interconnection/Unbundling)*, 76 FCC 2d 61 (Docket No. 21005) (1980), both *aff'd sub nom.* *Western Union Telegraph Co. v. FCC*, 665 F. 2d 1126 (D.C. Cir. 1981), *Regulatory Policies Concerning Resale and Shared Use of International Communications Services (TAT-4 Policy Review)* (Notice of Proposed Rulemaking), 84 FCC 2d 622 (CC Docket No. 80-632) (1980).

define "authorized users" and "authorized entities" does not suggest, as some parties have argued, an unspecified "intent" of Congress to limit Comsat to the role of a carrier's carrier. On the contrary, the failure of the Satellite Act to provide specific definitions for the terms "entity" or "user," would merely suggest that Congress intended that these terms be given their ordinary meaning.

36. One aspect of the statutory scheme of the Satellite Act which has perhaps caused some confusion is the requirement that customers (whether carriers, entities or users) desiring to take service from Comsat be "authorized" to do so. See 47 U.S.C. 735(a)(2), 735(b)(4) and 702(c). We do not believe that the statute's reference to "authorized" users itself prevents Comsat from offering service to non-carriers—since even carriers must be "authorized" to take service from Comsat. See 47 U.S.C. 702(7). We found in 1966 that the word refers to authorization by this Commission and that the authorization requirement simply requires us to make an affirmative finding that authorization of direct service will serve the public interest and comport with the purposes of the Satellite Act. We further held in 1966 that we could make such an affirmative finding on the basis of an *ad hoc* review. The parties do not seriously challenge the validity of *ad hoc* review, as we believe they reasonably cannot. The very use in the statute of the term "authorized" clearly presupposes that someone is to make a judgment as to which users are to be "authorized," and in this case that "someone" is clearly this Commission. Once one acknowledges that the Commission may authorize non-carrier users to take service from Comsat in "unique or exceptional" circumstances, it follows that we can broaden that authorization to include whole classes of users. It is settled law that regulatory agencies have the authority to replace *ad hoc* adjudications by a broad rulemaking proceeding. See *United States v. Florida East Coast Railway*, 410 U.S. 224 (1973). The rule we announce today constitutes an affirmative finding that direct, public operations by Comsat will serve the public interest and comport with the purposes of the Satellite Act.

37. Some parties have argued that an intent to treat Comsat as a carrier's carrier is evidenced by a speech given by Senator John O. Pastore, one of the floor managers of the bill which eventually became the Satellite Act.

38. In this speech Senator Pastore stated:

"I have heard references by some to competition between air and ground transportation, between land and water transportation, and between bus and rail transportation. But these are each competing in the same market, in service directly to the public. The satellite corporation and the carriers will not be competing in the same market. No one, either the proponents of H.R. 11040 or the advocates of Government ownership, has proposed that the satellite entity should go into competition with the existing carriers in serving the general public directly. To the contrary the satellite corporation under H.R. 11040 will serve mainly the carriers. Even the Government corporation contemplated by the substitute measure offered by Senator Kefauver would likewise serve the carriers."

Let me repeat these simple but all-important facts. The market to be served by the corporation consists of the carriers who will use its facilities. The market to be served by the carrier will be the senders and recipients of communications traffic. The corporation will depend upon the carriers for its revenues; the carriers will depend upon the corporation for facilities. Thus, this will not be a situation in which one enterprise is motivated to control another enterprise in order to stifle competition, to the public detriment. On the contrary, the interest of the carriers will lie in promoting the success of the corporation, thereby promoting their own success, with resulting benefits to the public. 108 Cong. Rec. 16920 (August 17, 1962).

39. In order properly to interpret Senator Pastore's remarks it is important that they be understood in context. Senator Pastore was speaking in defense of a proposal to limit ownership of 50 percent of Comsat's stock to the carriers. The ownership of the proposed satellite corporation had been controversial with some members of Congress supporting public stock ownership, some favoring limiting ownership to the international carriers as a means to protect their cable investments and some even favoring government ownership.¹⁴ As a compromise, the bill which eventually became the Satellite Act, and to which Senator Pastore's remarks were addressed, provided for mixed public and carrier ownership. Senator Pastore was thus seeking to allay fears of the critics of carrier ownership that such ownership would give the carriers a strong incentive to stifle development of the satellite system. To counteract this concern Senator Pastore noted that the satellite facilities would be of use mainly to the carriers and that they would thus generally supplement rather than compete with the carrier's cable investment. As a result, because of their

ownership, Senator Pastore believed the carriers would benefit from the success of the satellite medium and would not seek to undercut it.

40. Although the language used by Senator Pastore is somewhat ambiguous, we do not believe that he meant to suggest that the Satellite Act prohibited Comsat from providing direct service to noncarriers. As we noted in 1966, Senator Pastore said that Comsat would serve "mainly" the carriers. He did not say it would serve exclusively the carriers; nor did he refer to Comsat as a carrier's carrier. That he did not regard Comsat as so limited is evidenced by the fact that in reporting the Senate version of the Satellite Act bill, Senator Pastore stated that the proposed legislation provided for Comsat to make circuits available to carriers but that "[p]rovision is also made [in the bill] whereby [Comsat] may furnish channels for hire to other authorized entities * * *." S. Rep. No. 1584, 87th Cong., 2d Sess. 10-11 (1962). In view of the clear statutory language, Senator Pastore's familiarity with the statute and his earlier statement that Comsat would be allowed to provide service to entities other than carriers, we believe his remarks cannot reasonably be read to suggest that Comsat must be treated solely as a carrier's carrier.¹⁵ In any case, regardless of Senator Pastore's intent, his remarks cannot prevail if they are read in contradiction to the express statutory language authorizing Comsat to serve both carriers and non-carriers. As we pointed out in the Notice, 77 FCC 2d at 548, we need not resort to the legislative history for an indication of Congressional intent where such intent is manifested by the unambiguous language of the statute itself. See, e.g., *Ernst and Ernst v. Hochfelder*, 425 U.S. 185 (1976), *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978), *KCMC, Inc. v. FCC* 600 F. 2d 546, 549 (5th Cir. 1979). But see *Portland Cement Ass'n v.*

¹⁴ For a discussion of the various proposed bills and their provisions see S. Rep. No. 1318, 87th Cong., 2d Sess. (1962), S. Rep. No. 1584, 87th Cong., 2d Sess. (1962). See also S. Rep. No. 1873, 87th Cong., 2d Sess. (1962).

¹⁵ We stated in the Notice in this proceeding, 77 FCC 2d at 549, that at the time of Senator Pastore's speech he "presumably knew that the satellite bill did not expressly provide for Comsat to serve mainly the carriers. He also presumably knew that the bill empowered the Commission with broad discretion to authorize access. In addressing that discretion, Senator Pastore wanted to signal the Commission to limit non-carrier access to Comsat as long as certain conditions existed. For example, Senator Pastore did not want Comsat competing directly with the carriers because these carriers might become (and eventually did become) shareholders to Comsat. Senator Pastore was concerned that, if Comsat were allowed to compete directly, the carriers might be motivated to monopolize and control access to Comsat's space segment, thus suppressing marketplace competition and the development of a new technology."

Ruckelshaus 486 F.2d 375 (D.C. Cir. 1973).

41. The issue of Comsat's ability to serve non-carriers was raised and specifically considered by Congress and those who drafted the Satellite Act. Thus, this Commission on at least two occasions informed Congress that in our view the language of the Satellite Act would allow Comsat to provide service to the public and unsuccessfully sought to persuade Congress to amend the language to impose a ban on such operations. In October of 1961 we recommended to the National Space Council, the body charged by the Kennedy Administration with the task of drafting communications satellite legislation, that the legislation expressly limit Comsat to the role of a carrier's carrier. The Space Council declined our recommendation on the grounds that it was inconsistent with President Kennedy's statement of satellite policy that a satellite corporation be created to furnish for hire "channels of communications to authorized users, including the U.S. Government." See Statement of the President on Communications Policy, released July 24, 1961, reprinted in S. Rep. No. 1584, *supra*, at 25.

42. Thereafter, on February 28, 1962, Commission Chairman Newton Minow, testifying before the Senate Committee considering the Satellite Act, repeated the Commission's warning and unsuccessfully proposed that Congress amend S. 2814 to delete the language allowing Comsat to serve authorized entities and to include language restricting Comsat to the role of a carrier's carrier.¹⁶ Congress, however, failed to adopt Chairman Minow's recommendation—although the version of the legislation finally enacted did provide for mixed carrier and public ownership of Comsat. The provisions allowing Comsat to offer service alike to

carriers and authorized users however, survived unchanged. While the failure of Congress to enact Chairman Minow's proposal does not necessarily mean that it desired Comsat to have authority to engage in unrestricted public operations, it is clear that Congress did not want expressly to forbid such operations, but rather, wanted to leave the question of the scope of Comsat's operations open for determination by the Commission. This purpose has clearly been accomplished by the unambiguous language of the Satellite Act itself.

B. Policy Analysis—Authorized User, Changed Circumstances, and the Potential Impact on the IRCs

43. As we have already noted, our *Authorized User* decision allowed non-carriers to take service directly from Comsat only under "unique or exceptional" circumstances. In reaching our basic policy determination to limit competition between Comsat and the other carriers providing international service, we were primarily concerned with the possible harm that such competition would cause the existing carriers—particularly the IRCs—and the effect that a weakening of the carriers might have on the rates and service they provided the general public. We reasoned that conventional carriers—with their high-cost cable facilities—would not be able to compete with Comsat in the provision of leased channel services, that the predictable loss of a "substantial share" of their leased-channel traffic would seriously reduce the IRCs' operating revenues and that such losses would either weaken them to the point where they could no longer provide adequate service or would, at least, require that their rates for switched message services, such as telegram, telex, TWX and, perhaps, MTS, would have to be raised to make up for the leased-channel revenues lost as a result of competition. Since "only a very small part of the using public using international communications facilities ha[s] sufficient traffic to justify or require leased circuit facilities," we reasoned that allowing customers who take service directly from Comsat would mean that the new satellite technology would be used "for the apparent benefit of a few large users" to the "detriment [of] the vast majority of users." 4 FCC 2d at 432-3.

44. Whatever the validity of our concerns sixteen years ago, they have been largely eroded by changing circumstances. Economic conditions facing international carriers have undergone a drastic transformation since that time. Traffic volumes for all

international services have increased geometrically and the international communications market has experienced, and continues to experience, rapid development both in terms of the growth of traditional services and in the appearance of new services. Indeed, the international market is exhibiting much the same kind of growth that we are experiencing in the domestic market. Although the international communications market is still considerably smaller than the domestic U.S. market, it has become an important part of U.S. commercial activity.

45. As an example of this transformation, AT&T's overseas revenues have grown from \$94 million in 1966 (of which 90 percent was due to MTS and 10 percent to leased channels) to \$1.5 billion in 1980 (of which more than 99 percent was due to MTS and less than one percent to leased channels). Similarly, revenues for all other overseas telephone carriers have grown from \$23 million in 1965 to over \$100 million today. Assuming proper safeguards, a matter which we shall discuss below, there can be no question about the ability of AT&T and the other telephone companies to compete directly with Comsat for overseas leased channel and other traffic.¹⁷

46. Traffic and revenues for the IRCs—the primary focus of our concerns in the *Authorized User* decision as well as in the *Notice* in this proceeding, 77 FCC 2d at 543—have also shown significant increases. IRC revenues were only \$121.5 million in 1966. By 1981 they had grown approximately five-fold to \$578 million. In 1966 we were concerned about the apparent importance to the IRCs of leased-channel revenues and the damage the loss of any part of them might cause. However, in 1976, the four IRCs included in our Audit Report in Docket No. 20278 had rates of return of leased-channel services ranging from -3.3 per cent to 5.6 per cent.¹⁸ Of their

¹⁶ See Proposed Communications Satellite Legislation: Hearings on S. 2650 and S. 2814, *supra*, at 204-10 and 470-1. On March 14, 1962, Chairman Minow repeated his recommendations in testimony before the House Committee on Interstate and Foreign Commerce, which was considering H.R. 1011—the House version of S. 2814—which also provided for Comsat to serve "authorized entities." See Proposed Communications Satellite Legislation: Hearings on H.R. 10115 and 10138 Before the House Comm. on Interstate and Foreign Commerce, 87th Cong., 2d Sess. 401-8 (1962). Chairman Minow again repeated his views in further testimony before the Senate Commerce Committee, Hearings on S. 2814 and S. 2814 Amendment Before the Senate Comm. on Commerce, 87th Cong., 2d Sess. 62-71 (1962). Although Congress adopted language, see 47 U.S.C. 721(c)(2), passed by Chairman Minow to give the Commission discretion in regulatory access to Comsat, see Hearings on S. 2650 and S. 2814, *supra*, at 67-8 and 115-6, it otherwise rejected all of his proposals to include language specifically restricting Comsat to the role of a carrier's carrier.

¹⁷ AT&T's comments in this proceeding did not directly oppose Comsat's provision of services to the public; it concentrated rather on structural and other changes which it feels must accompany broadened authority for Comsat to control against potential abuses. Although HTC did file comments suggesting substantial revenue diversion, it made no real attempt to quantify such diversion and provided no convincing evidence that such diversion would actually occur or that it would impair HTC's ability to provide services to the public.

¹⁸ See Preliminary Audit and Study of International Carriers, 75 FCC 2d 726 (1980) releasing Report of Common Carrier Bureau Staff on Results of Preliminary Audits and Analysis of the Cost Studies for Docket No. 20778 (Audit Report), Table 9, p. 29, FCC 79-840, released January 29, 1980. See also Audit Report Tables 12 and 13, pp.

total net income of \$48.9 million, only \$3.6 million was attributable to leased-channel services.¹⁹ In sharp contrast, between 1966 and the present telex revenues increased thirteen fold. In that same year telex provided about 62 per cent of the IRCs' revenues and showed a rate of return ranging from 31.7 per cent to 58.3 per cent.²⁰ Telex has thus become the major source of the IRCs' revenues and profits, while the relative importance of leased channels has substantially decreased in the sixteen years since the *Authorized User* decision.

47. In addition, the government's role as a customer for leased-channel services has decreased markedly during the same period. In 1965 the government leased 179 of the approximately 200 voice-grade leased channels serving overseas points. This was the equivalent of about 90 per cent of the leased channels and accounted for 70 per cent of leased-channel revenues. By 1978, however, government accounted for less than one-third of the IRCs' leased-channel revenues.

48. Another factual assumption on which we based our 1966 policy has also changed: the relative costs of cable and satellite circuits. In our *Authorized User* decision, we assumed that satellite circuits were and would remain substantially less expensive than cable circuits. Indeed, cable circuits in 1966 were quite expensive. For example, a circuit in the then newest long-haul cable (TAT-4) had a capital cost of approximately \$393,000. The satellite certainly appeared likely in 1966 to yield circuits with a much lower cost. However, what we failed adequately to grasp in 1966 was that technological advances would greatly expand the capacity of cables and reduce their per-circuit costs. For example, the most recent transatlantic telephone cable we authorized (TAT-7) had a capacity of 4200 voice-grade circuits and a per-circuit cost of approximately \$46,000. See *American Telephone and Telegraph Co., et al.*, 73 FCC 2d 248, 257 (1979). Further, the initial projections for the fiber-optic cable under development for the Atlantic show a base capacity of 12,000 voice-grade circuits and a per-circuit capital cost of \$15,000 to \$19,000, depending upon the configuration ultimately selected. See cost data filed in response to Notice of Inquiry in

Overseas Communications, 73 FCC 2d 193 (1979).²¹

49. As a result of these and other developments, cables and satellites have become much more cost competitive than we believed possible in 1966—indeed, it now appears there may be a number of routes where cables may be more economical than satellites. It is thus no longer clear that were we to allow Comsat to provide service directly to the public that the IRCs would lose all their leased-channel customers, since they can provide competitive service to many points by cable, or that the loss of some leased-channel revenues would have a devastating impact upon the IRCs.

50. Other important changes have occurred since 1966. We have acted recently to change the nature of the international market. In 1966 the IRCs were limited to international operations from a few U.S. domestic and foreign points of operation. The IRCs now have an unlimited opportunity to provide international service from any point in the United States. They now also have authority to serve the U.S. domestic market as well. As a result, one major market segmentation that we earlier mentioned as a characteristic of the international market has been eliminated.

51. The elimination of the dichotomy between the domestic and international communications markets is part of the overall policy we have followed in recent years to remove artificial barriers to the entry of potential competitors and to relax policies which unduly interfere with the free play of competitive forces. Experience in the international communications market, as well as our observation of the economy as a whole, has convinced us that competition can play an important role in protecting the interests of international telecommunications users. At best traditional rate and rate-of-return regulation is a cumbersome and imprecise exercise. In the case of the U.S. international communications industry, the multiplicity of carriers and services increases geometrically the difficulty of such regulatory efforts. Based upon our experience in the domestic market, we believe that our regulatory efforts will benefit greatly from supplementing traditional, formal

²¹ It is difficult to make direct cost comparisons between cable and satellite circuits. The capacity of a satellite is dependent to a large extent upon the number and geographical dispersion of the earth stations which operate with it. However, Comsat's present tariff rate is \$1.125 per month or \$13,500 per year for a voice-grade half circuit. At a voice-grade circuit construction cost of \$15,000 to \$19,000, such a cable should be quite competitive.

procedures with increased competition wherever possible. Indeed, we believe that the domestic experience clearly demonstrates that service innovation and rate competition flourish best in a freely competitive market and that the development of such a market in the international sphere will be the best way to protect international communications users. We thus believe that the public will be served through a relaxation of artificially restrictive policies such as our 1966 *Authorized User* decision and the market dislocations and regulatory costs it has entailed.

52. In any case, quite apart from our changed policy perspective, it is by now clear that whatever perceived need there may have been in 1966 to protect the IRCs from competition, that need is no longer present. As the results of our 1976 Audit Report and the carriers' annual reports have shown, the IRCs' operations are, at least for the most part, profitable and the IRCs are experiencing rapid growth. They have the economic resources to prove, and indeed they already claim to be, formidable competitors.

53. For reasons of its own, see para. 75, *infra*, Comsat has declared that it has no interest in providing telex or any other international service on an end-to-end basis in competition with the IRCs. If Comsat changes its mind and decides to compete with the IRCs for through service—a course which we believe would serve the public interest, and which we would therefore welcome—it cannot enter this market overnight. Before it can begin to compete, Comsat will need to obtain operating agreements with overseas telecommunications entities, a process which will take time. It will also take time for Comsat to develop an effective marketing effort in order to sell service directly to the general public. Thus, the only realistic threat of revenue diversion to the IRCs resulting from Comsat's entry would, for the short term, be limited to leased-channel services, in situations where customers elect to bypass the IRCs and lease satellite circuits directly from Comsat.

54. Our review of this matter convinces us that any diversion of leased-channel revenue which might result from our new policy is not likely to be terribly severe; or to reduce the ability of the IRCs to provide good quality service to the public. As we have already mentioned, the rapidly diminishing gap between cable and satellite facilities costs should significantly aid the IRCs in pricing their leased-channel services competitively.

32-33, illustrating telex's accelerated growth and profitability of telex service.

¹⁹ *Id.*, Table 6, p. 22 and Table 9, p. 29.

²⁰ *Id.*, Table 8, p. 28.

Moreover, it is not clear that all leased-channel service customers would elect to deal directly with Comsat. A customer taking direct service from Comsat would be required to make his or her own service arrangements directly with the foreign telecommunications entities and domestic arrangements with a domestic carrier. Such a course may be open to large users, but it is not clear whether the average subscriber for leased-channel services would care to go to such trouble. Furthermore, there is now a much more varied subscriber population for this service than existed in 1966. The overseas leased-channel market is no longer dominated by the federal government which might be regarded as being in a particularly advantageous position to negotiate the required operating arrangements with the foreign administrations.

55. Moreover, even if contrary to our expectations, the IRCs do suffer a significant reduction in leased-channel revenues, there is no evidence to indicate that such a reduction would affect their overall profitability to such extent as to impair their ability to provide service. As explained earlier, the 1976 Audit Report found leased-channel services to be among the least profitable of the IRCs' major service categories and telex their chief source of revenues and profits. Telex service has experienced steady and rapid growth over the last sixteen years. We discern no reason why telex service in some form should not continue to grow for the foreseeable future. In all likelihood, IRC facilities idled by any loss of leased-channel service can, at least in part, be transferred to the provision of the growing telex service. Further, although less profitable than telex, leased-channel service has also experienced rapid growth. For example, over the past 15 years the IRCs' leased-channel revenues have grown from \$20.2 million in 1965 to \$100 million in 1980, an average annual growth of 11.3 per cent. In all likelihood, any diversion of leased-channel revenue to Comsat which may occur will do no more than to slow the rate at which the IRCs' revenues from this service grow.

56. The impact upon the IRCs for the long term is, for obvious reasons, more speculative. We do not know when, or even if, Comsat will offer telex or other switched message services to the public. As explained more fully below, we have undertaken to provide necessary safeguards so that Comsat derives no unfair advantage from its direct relationship with INTELSAT. Under these circumstances, the IRCs, with their

established market position, experience, long history of service and relations with the foreign telecommunications entities should have sufficient advantages of their own to remain successful competitors. However, our primary concern is to assure that the IRCs have a fair opportunity to compete. If in such an environment one or more of the IRCs is unable to survive, the public interest is not necessarily harmed thereby. So long as the public is not deprived of service, the failure of a carrier is not the responsibility of this Commission. We were not created to guarantee the survival of any carrier, only to assure that its competitors deal with it on a just and reasonable basis. If an IRC is forced out of business by its stronger competitors, those competitors will remain and will rightfully be the ones to provide service to the public.

57. Although the IRCs have claimed they will suffer substantial revenue diversion, their supporting estimates, if provided at all, are vague and otherwise difficult to credit. If anything, the IRCs' collective showings on this point are so weak as simply to reinforce our view that no substantial revenue diversion will, in fact, occur as a result of our decision to allow Comsat to compete directly for international traffic.²²

58. Specifically, RCAGC estimates that Comsat will cause it to lose at least \$6.5 million in leased-channel revenues each year and will reduce its profits by \$3.8 million. (Unless otherwise stated, the carriers based their revenue figures on 1979 data). ITTWC estimates that it will lose approximately \$20 million of leased-channel revenues each year, or 65-70 per cent of its total leased-channel business. It also asserts that it will lose an additional \$20 to \$25 million each year in revenues from other services, primarily telex. ITTWC also estimates that, looking at the IRC industry as a whole, Comsat's entry will result in a diversion of revenues of \$120-\$135 million on the first year—or 24 to 27 per cent of total IRC revenues. WUI argues that Comsat's entry will threaten the continued viability of the IRCs because it will divert substantial amounts of IRC leased-channel revenues and, through a "ripple effect," that it will also result in losses of revenues from other services as well. WUI argues that revenues from all services are indispensable to the

IRCs, but does not predict a specific dollar amount it expects to lose.

59. RCAGC did not explain the assumptions on which it based its estimates of revenues or the methodology it employed. Although ITTWC does provide some explanation of its methodology, it apparently bases its argument upon an assumption that Comsat will capture virtually all of its satellite-based private lines. ITTWC also assumes that Comsat will enter other end-user markets such as telex and that many customers who switch to Comsat for private-line service will also switch to Comsat for all their international record services, simply to achieve a full-service relationship with the carrier.

60. ITTWC's argument here appears to be typical of the IRCs' approach to the question of revenue diversion which suggests (1) that the IRCs will make no effort to respond to competition from Comsat and (2) that IRC service offers no benefits over Comsat's provision of bare space-segment capacity. For example, none of the IRCs indicates that it would decompose its rates to meet a Comsat rate. Rather, the IRCs tacitly assume that Comsat's satellite rates are so much cheaper than any rates they could file that they will be unable to retain any leased-channel customers. We question the reasonableness of these assumptions. We observe, too, that Comsat, the presumed beneficiary of our policy change, takes a very different view of the matter. Comsat argues that its satellite circuits are at best marginally more economical than existing IRC rates and questions whether it would be able to attract many customers. In addition, if the IRCs are correct that they add nothing to the Comsat space segment, then the current price differential between their leased-channel service and the lease charges for Comsat space segment may not be justified. The profit the IRCs earn on their service represents a return on money they have invested in providing a service for which a customer is willing to pay. If the IRCs add nothing to the Comsat facilities, they cannot reasonably expect to be able to earn a return.

61. We are not prepared to conclude that the IRCs do not add services which are beneficial to their subscribers; nor do we believe that the IRCs want us to reach such a conclusion. However, the IRCs cannot have it both ways here. If they are efficient and provide services the public needs, they should be able to compete with Comsat under fair conditions. If they cannot, and if it is true that Comsat can simply brush them

²² The IRCs' primary argument appears to rely less on a claim of diversion *per se* than on an assumption that Comsat will engage in predatory behavior or other forms of unlawful conduct. They suggest that Comsat will use its monopoly position as the supplier of international satellite space segment to gain an unfair competitive advantage in the user market. We deal with this problem below.

aside, this merely suggests that there are public benefits to be obtained by allowing Comsat to compete for such traffic.

62. We also find it difficult to understand ITTWC's argument that somehow Comsat will have an advantage because it is "full service carrier." ITTWC argues that it will lose not only leased-channel revenues but also telex revenues because customers shifting to Comsat for leased channels will also shift their telex business because they wish to obtain all their services from one carrier. It may be true that customers prefer to obtain all their communications service from one provider—so long as that choice does not force them to pay too great a penalty in cost or service quality. However, we cannot fathom ITTWC's claim of a disadvantage in this respect. ITTWC is itself a full-service carrier and so, according to its own logic, should be able to retain its leased-channel customers for that reason alone.

63. Finally, the IRCs argue that their leased-channel revenues are "indispensable." This claim is so vague as to be meaningless. A carrier's claim of injury due to a revenue loss if relevant to the public interest only to the extent that such a loss is so severe as to threaten the carrier's existence or otherwise negatively to affect the service available to users. The IRCs do not specifically make such a claim. Indeed they do not even claim that they will be unable to learn a fair rate of return as a result of allowing Comsat to provide service directly to customers.

64. For all the reasons already mentioned, we do not believe that the realities of the situation bear out the IRCs' suggestion that substantial revenue diversion will result from allowing Comsat to compete for international traffic. To the extent there may be diversion, we do see no reason to believe that it would be so significant as to lessen the IRCs' ability to provide service to the public or that it would otherwise impair the quality or availability of public service.

C. Analysis of Benefits

65. As we discussed above, Congress in enacting the Satellite Act did not specify who should be an "authorized user," but left that determination to the discretion of the Commission. Having determined that our former policy restricting Comsat to a carrier's carrier role is no longer required to protect existing international carriers, we now find that authorizing all non-carrier users to obtain service directly from Comsat will advance the goals of the Satellite Act, provide additional benefits

and alternatives to users and otherwise serve the public interest. We find, as we tentatively concluded in our *Notice*, that the primary objectives of the Satellite Act—"the reflection of the benefits of [satellite] technology in both quality of services and charges for such services, [and] * * * that the corporation created under this act be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public"²³—will be better attained through Comsat's direct offering of satellite service to the public. Likewise, we find that such a policy will advance the public-interest goals of the Communications Act. Our decision here is not merely to introduce competition for competition's sake, but to make available directly to the public the cost and service benefits which we expect to result from increased competition between satellite and cable technologies. See *FCC v. RCA Communications Inc.*, 346 U.S.C., 86, 97 (1953).

66. To support our public interest-finding under the Communications Act authorizing non-carriers to obtain service directly from Comsat, we rely on three principal rationales. First, although we foresee that many, if not most, users will prefer to rely on existing carriers to provide "through" routing of their communications as they have in the past, certain users may benefit from the elimination of these "middlemen" our new policy makes possible. We expect that these users will save money and pass their cost savings on to other members of the public. This will, in turn, apply competitive pressures to existing carriers.

67. Second, our decision permits Comsat to provide additional end-to-end services directly to the public. Although Comsat has expressed no present intention to do so, we find that the industry would benefit from entry of a new competitor such as Comsat which has the resources and experience to play a major role in providing satellite services to the public. Indeed, the mere presence of a powerful "potential entrant" could have a healthy, pro-competitive effect.

68. Third, on a somewhat more theoretical level, we believe that replacing a regulatory requirement which has outlived its usefulness by marketplace forces will serve the public interest. In general, our action today is part of a continuing effort to remove artificial constraints and barriers to entry which inhibit the operation of a free, competitive communications

market. The elimination of the *Authorized User* policy facilitates our decision to do away with closely related regulatory constraints, including prescribed-use formulas and mandatory rate compositing. As suggested earlier, these are features of a regulatory design which, while perhaps guarding the security of entrenched carriers, has not always guaranteed the public efficient service at reasonable rates.

1. Public-interest Benefits of Direct Access to Comsat's INTELSAT Transmission Capacity

69. Our decision today authorizes non-carrier users to gain direct access to Comsat's INTELSAT basic transmission services. Henceforth, Comsat will be required to lease basic transmission capacity to all users on the same terms and conditions Comsat now offers to carriers. Under this policy, the service provided by Comsat remains roughly the same, although the spectrum of users who may avail themselves of that service will be broadened. Customers will be able to choose to take service from one of the service carriers (AT&T or the IRCs) or to lease directly from Comsat. Even if Comsat elects to limit itself to its current role of providing basic satellite transmission capacity at U.S. earth stations, affording customers the opportunity to deal directly with Comsat will impose competitive pressures on the existing carriers. The comments in this proceeding from ARINC, DoD, Dow Jones and SITA indicate that there will be users for such basic transmission service.

70. We expect that certain users, notably larger users such as ARINC or DoD, will benefit from lower prices made available to them by dealing directly with Comsat. Indeed, those filing comments herein stated that they believe that being able to deal directly with Comsat will provide them greater flexibility and substantial cost savings. We expect, however, that many users will not choose to deal directly with Comsat because of the complications involved in arranging through international service. In addition to the need to obtain space-segment and earth-station facilities from Comsat, these include the need to make domestic and connecting arrangements. However, there are public benefits to be gained from making this alternative available to those users who can lower costs through direct dealings with Comsat, despite the associated transaction costs. Furthermore, as we noted in discussing the question of revenue diversion, the opportunity we offer to users to lease satellite circuits directly from Comsat

²³ 47 U.S.C. 702(c).

affects primarily leased-channel service and, therefore, should not harm users of switched services.²⁴

2. Public-interest Benefits of End-to-End Service by Comsat

71. Under our changed policy, Comsat also has an opportunity to become an international service carrier. Through a separate corporate subsidiary, Comsat will be eligible to apply for authorization to provide end-to-end (or through) international communications services such as leased channels, telex or MTS. The Comsat subsidiary would lease satellite transmission facilities from the World Systems Division under the same terms and conditions as any other entity and would use the facilities in the provision of end-to-end services.²⁵ The Comsat subsidiary would become an international carrier similar to AT&T and the IRCs and would be separately regulated in its provision of basic services. It would also be necessary for the Comsat subsidiary to obtain an operating agreement from an appropriate foreign entity and to make arrangements for overseas connecting facilities.

72. Comsat in its comments indicated that it would not be feasible for it to become a service carrier. Comsat did not address what kinds of switched services it might offer or the benefits it might offer customers. We are,

therefore, less certain about the potential benefits of Comsat's entry as a switched-service carrier or as an end-to-end carrier basis than we are in simply allowing other users to take its service directly.

73. However, should Comsat elect to offer end-to-end services, the introduction of an additional well-financed and technologically-sophisticated competitor will further increase customer choice and promote a technologically-advanced, efficient communications system. To the extent that Comsat elects to provide end-to-end service, it would be able to extend the economies of satellite transmission to these markets. Comsat's entry into the end-to-end services market would benefit customers by giving them an additional choice of supplier for their communications needs. Increased competition could be expected to affect competing carriers' performance and charges, as we discussed above in connection with direct leasing of Comsat capacity. Finally, even if Comsat does not enter new services, we find that the presence "in the wings" of this potential entrant would have a salutary effect on competition.

74. We also observe that Comsat, in stating that it is unlikely to enter the switched-services market and that any benefit from its entry would be "minimal," is departing from a position which it has advocated in the past. At the time of our 1966 *Authorized User* proceeding, Comsat attached a great deal of importance to the ability to market its innovations to potential users. Moreover, Comsat has on a number of occasions eagerly sought precisely the broadened authority in which it now disavows interest. Comsat's reluctance in this proceeding may arise from a desire not to upset existing institutional arrangements, including a comfortable monopoly as supplier of satellite facilities with a guaranteed share of overseas circuits, for the vagaries of the competitive market. We expect that, as a result of our earlier decisions and those taken today, Comsat increasingly will be subjected to market pressures. In this changing environment where Comsat's monopoly position is less firm, it may become more interested in providing new services in competitive markets.

3. General Public-interest Benefits, Including Elimination of Prescribed-Use Formulas and Mandatory Rate Compositing

75. We have also based our public-interest finding here on the conviction that competition is preferable to

regulation as a means of allocating Comsat's services, especially when the conditions in the international communications marketplace used to justify our *Authorized User* policy no longer exist. Congress' passage of the Record Carrier Competition Act strongly supports this view.

76. Under current policy, cable and satellite facilities are integrated into a comprehensive system. Because each type of facility has its own unique characteristics, these facilities do complement each other; but our existing policy has also had the unintended effect of neutralizing what can be healthy intermodal (cable/satellite) competition. Allowing Comsat to offer users satellite-based services at rates based solely on satellite costs will give it a greater incentive to develop the satellite system and to keep satellite costs to a minimum in order to earn a larger market share. Furthermore, as discussed in greater detail below, under our current policy Comsat's share of traffic has been determined by loading prescriptions with little or no reference to the relative costs of cables and satellites. Our new policy will require that all carriers earn their traffic through their competitive efforts. As a result, our policy will also give the owners of the cable medium a chance to increase their market shares and thus will give them an incentive to develop the potential of that medium.

77. Elimination of the *Authorized User* policy is especially desirable because of its interrelationship with two other regulatory policies—prescribed-use formulas and mandatory rate compositing. These policies, taken together, have constrained Comsat's exploitation of the international satellite system. The *Authorized User* policy bound Comsat to deal only with existing carriers. Preventing Comsat from dealing with end users has made it dependent for its traffic upon the carriers who own the cable facilities which are the major alternative to Comsat's facilities. This dependence has had two related results. First, the end-service carriers have had little incentive to advance satellite technology, since increases in satellite use threaten their cable investments. Second, Comsat's insulation from the end user has reduced Comsat's incentive to improve satellite service or to keep satellite costs as low as possible. Since Comsat cannot deal with its ultimate customers, it cannot be sure that the intermediate carriers will make service innovations or rate reductions available to them. Moreover, since the share of traffic Comsat receives is determined by the carriers,

²⁴ By authorizing all users to obtain service directly from Comsat we shall also resolve a dilemma arising from our Computer II proceeding. There we found that enhanced-service providers are not common carriers within the meaning of Title II of the Communications Act. See Second Computer Inquiry (Computer II), 77 FCC 2d 384, 387 (1980) *appeal pending sub nom. CCIA v. FCC*, Case No. 80-1471 (D.C. Cir., filed May 15, 1980). On reconsideration, 84 FCC 2d 50 (1980), we held that our basic-transmission/enhanced-service dichotomy was applicable to all enhanced-service providers without distinction. When an enhanced-service provider sought to extend service overseas, if it asserted its status as a non-carrier under Computer II, it would likely not be designated an authorized user for purposes of dealing directly with Comsat under our *Authorized User* decision. The enhanced-service provider might, therefore, have decided to disguise its service as a common carrier basic service in order to become eligible to deal directly with Comsat. Our action here, therefore, will remove a restraint on enhanced-service providers and make it clear that they may deal directly with Comsat without the need to become a Title II common carrier. In GTE Telenet Communications Corporation, File Nos. 1-T-C-81-274, FCC 82-377, 1-T-C-82-210, FCC 82-377, — FCC 2d —, also decided today, we reaffirm our previous finding that the basic/enhanced distinction is applicable to proposals by domestic enhanced service providers to extend their service to international points.

²⁵ Should Comsat elect to provide enhanced services, as defined in Section 64.702(c) of the Commission Rules and Regulations, 47 CFR 64.702(c) (1981), it must offer them through a corporate affiliate separate from its INTEL/SAT/INMARSAT operations consistent with this structure.

Comsat cannot be sure that a reduction in charges will result in its receiving a larger market share.

78. Indeed, the question of relative cable and satellite use has been a problem since shortly after we issued our *Authorized User* policy. As one might logically expect, the IRCs and AT&T have traditionally favored use of cable over satellite, in part at least from a desire to protect their cable investments. This is not to say, however, that they have opposed use of the satellite, indeed on many routes satellite circuits are the only facilities available. It is simply that where there is a choice of cable and satellite facilities the carriers tend to prefer to use cable for most services. In *ITT Cable & Radio Inc.—Puerto Rico, et al.*, 5 FCC 2d 823 (1966) (policy statement), 7 FCC 2d 957 (1967) (authorization), we authorized both an additional cable facility between the United States Mainland and Puerto Rico and an earth station in Puerto Rico. Although there was no urgent need for the total additional capacity those two facilities would provide, we decided to authorize both as a way to encourage the development of both technologies. As a result, to assure that both facilities were reasonably used, our order instituted the first "prescribed-use" formula, which specified that the carriers should activate equal numbers of cable and satellite circuits. Since then, as the factual situations have changed, the forms of prescribed-use formulas have also changed, but have commonly set some proportion of cable to satellite circuits the carriers are to activate. The purpose of the formula also shifted from assuring reasonable use of both facilities to assuring that Comsat's traffic share grew in an orderly way.

79. The composite-rate policy arose from our *Authorized User* decision as a means to assure that users received the economies of satellite transmission even though Comsat was not permitted to offer service directly to end users. Our policy required the carriers to review their leased-channel-service tariffs to assure that the lower costs of satellite transmission were reflected in their rates. In complying with that requirement, the carriers have filed one rate for each destination based on an arithmetic average of the costs of serving that route by cable and by satellite. Because the composite-rate requirement was only applicable to leased-channel services, it has had a somewhat limited effect on international rates. Furthermore, the rate averaging entailed by rate compositing has diluted the economies of satellite transmission

(and perhaps in some instances those of cable transmission) in those services where compositing has been applied. The existence of separate cable-only and satellite-only rates will allow customers electing the cheaper medium to achieve the full economies that medium allows.

80. Although Comsat has opposed rate compositing because it prevents customers from seeing a cost difference between cable and satellite circuits, it has not been in a position to make any change since it is prevented from interacting with end users. Furthermore, because the share of traffic it receives is set by formula, Comsat has had no incentive to reduce its satellite rates to attract more traffic. To end such undesirable situations, we have decided to affirm the proposals in our Notice to end mandatory rate compositing and to remove ourselves, as much as possible from prescribing the loading of cable satellite facilities.

81. A number of those filing comments argue that any change in our *Authorized User* policy should be accompanied by changes in our facilities-planning processes.²⁶ Most parties, however, address the narrower question of prescribed-use formulas. AT&T, WUI, RCAGC, ITTWC and DoD urge abolition of such formulas, arguing that decisions on how facilities are used should be left to the market and that competing carriers need flexibility in facilities use decisions to best meet customer demands. The Department of Justice further argues that restrictions on which facilities a carrier may use prevent it from taking advantage of each facility's relative efficiencies—and, thus, from making better use of each medium to build a larger market share. AT&T states that market forces will fully protect the national interest in a strong communications industry. AT&T does not believe that either satellite or cable would be under-utilized because each medium has its own advantages. AT&T believes that the carriers will continue to use both facilities to maintain diversity, even in the absence of use prescriptions.²⁷

²⁶ AT&T, for example, argues that we should gradually remove ourselves from the facilities-planning function, and more particularly from deciding how individual facilities should be used. NTIA argues that there can never be true competition between cables and satellites unless the owners and users of each are free to use them as they find beneficial and to build them at the times they find most advantageous.

²⁷ However, AT&T states that it is aware that the Commission must maintain some degree of oversight over facilities investment to protect the national interest. It believes, however, that market forces will advance that interest and that the Communications Act gives us adequate powers to

82. Comsat, on the other hand, opposes the end of prescribed-use formulas. Comsat argues that our past prescribed-use policies have resulted in an efficient mix of facilities and that their continuation is vital to keep satellite costs low. Comsat notes that AT&T and the IRCs have a preference for their own cable facilities and cannot be expected to make activation decisions on a basis which leads to socially optimal investment decisions for users as a whole. Comsat argues that most of the international facilities are those used in provision of the switched MTS and telex services. In providing those services, carriers select the facility to be used for a particular call; the customer has no way to make his or her wishes known. Comsat believes that carriers thus have absolute market power and can distort the selection of facilities to their own private benefit. Comsat also notes that nothing in our proposed policy would neutralize this excessive market power and that loss of revenues to cable circuits on high-density routes will pressure INTELSAT to lower its rates on these routes to meet cable competition and to raise them on other, mostly Third World routes.

83. We do not find that any loading principle should be preordained. Thus, as a matter of policy we shall not guarantee either the cable or the satellite medium any particular share of the market.²⁸ Our long-term goal is to create a viable international market in which users and carriers make facility-use decisions with as little regulatory interference as possible. A freely operating, competitive market is the best means of determining the relative efficiencies of the two mediums and of assuring that the comparative advantages of each will be appropriately passed on to the end user.

84. However, Comsat from its birth has been constrained to a limited role which left it without the opportunity to develop its own traffic base. Under our prescription of its role as a "carrier's carrier," Comsat has been at the mercy of other carriers for its traffic. Given those carriers' possible ownership bias

intervene to correct a gross imbalance in facilities use, should one develop.

²⁸ Indeed, in Docket No. 18875, *Overseas Communications*, 87 FCC 2d 358 (1977), we have already taken a step in that direction by eliminating any filing requirements for the IRCs in the North Atlantic and by adopting AT&T's request to employ balanced loading of available facilities. Balanced loading is a use principle which seeks to place the same number of circuits on all facilities available to a given destination, subject to capacity limitations, treating all paths as equal without regard to whether they are provided by cable or by satellite. Balanced loading seeks to minimize the disruption which would follow an interruption of a facility.

in favor of cable facilities, and Comsat's constrained role, we have been compelled to ensure that the carriers allocated a reasonable amount of traffic to Comsat.²⁹ By removing the constraints on access to Comsat, we believe that we are setting the stage for Comsat's independence and, over the long term, for our removal from the process of allocating traffic.

85. This does not mean, however, that we can or should remove ourselves entirely from the question of facilities planning or use, especially in the near term. The United States has an interest in the maintenance of a strong, efficient international transmission system and Congress has placed upon us the responsibility to assure that this interest is protected. We shall, therefore, continue to oversee the building of all future international cable, satellite or other facilities. With respect to the use of facilities, we propose in the future to allow the carriers discretion in making circuit-activation decisions, relying upon the developing market to guide them. However, recognizing that the effects of our past regulatory policies will not disappear immediately, we shall continue to monitor the carrier's use of facilities to assure that both cable and satellite facilities are reasonably used.

86. In our Notice we also questioned the continued reasonableness of our composite-rate policy. We noted that it had only been partially successful in assuring that users received the benefits of satellite economies. While our policy has required the carriers to pass through satellite cost savings, those savings have been limited largely to leased-channel services.³⁰ Because compositing involves rate averaging, reductions in satellite costs are only partially reflected in end-user rates. On this point, we noted that the IRCs' composited AVD half-circuit charges are three to four times Comsat's monthly half-circuit charge of \$1,125, depending on the route. We thus tentatively concluded that allowing Comsat to provide services directly to the public, at rates based solely on its satellite costs,

would allow it to grant users substantial rate reductions.

87. The parties in their comments express three positions on our proposal to decomposite rates. NTIA, the Justice Department and Dow Jones support our proposal as the best way to assure that the benefits of each medium may be realized. The Justice Department and NTIA argue that rate decompositing will allow rates to reflect the true relative costs of cable and satellite facilities and will thus give customers the chance to make the decision as to their relative worth. AT&T, HTC and RCAGC take a middle course, arguing that we should make decompositing discretionary rather than mandatory, so that carriers will have flexibility to respond to customer needs and the pressures of competition. Comsat, ITTWC and WUI, on the other hand, oppose our proposed policy essentially on the ground that decompositing will allow the carriers to file differential rates leading to unlawful rate discriminations. WUI argues that decomposited rates will likely cause carriers to overinvest in lower-cost facilities, thus wreaking havoc in the facilities-planning process and "trapping" a carrier into a disastrous position should there be a major change in transmission technology. Comsat argues that IRC leased-channel rates are already too low and that they are being subsidized by other services. Comsat states that the only place it could offer a satellite-only rate could be in leased-channel service. Comsat argues that if it were to offer such a lower rate the IRCs would undoubtedly lower their charges to meet competition. Such a result, says Comsat, would only increase the pressure on the carriers' rates for other services, and thus exacerbate the cross subsidy. Finally, Comsat argues that the IRCs have sufficient market power so that they could deaverage their rates in favor of high-density routes to the detriment of customers on low-density, mainly Third World, routes.

88. We are unpersuaded by arguments that allowing the carriers to file rates applicable to a particular transmission medium will alter significantly a carrier's opportunity to engage in unlawful rate discrimination in favor of more competitive services or more competitive routes. The ability to file a cable-only or satellite-only rate under appropriate circumstances has existed since 1967. As a result, we do not believe extending that option to other services will alter a carrier's motivation or opportunity to violate the law. The carriers are required to file rates which are just and reasonable; we shall hold them to that duty. Rate decompositing

will simply allow the carriers to price their services based upon the costs associated with the medium used to provide service.

89. Similarly, we are not convinced that the ability to decomposite rates will cause the carriers to "overinvest" in either type of facility. Because each medium has its own particular advantages and disadvantages, we can expect the carriers to continue to make their investment decisions with an eye to their long-run best interests.³¹ Rate decompositing will simply facilitate the development of intermodal competition and a socially beneficial increase in the use of lower-cost transmission facilities.

90. Rate decompositing should be voluntary. Carriers should have flexibility to tailor their services to the needs of their customers and to reflect any cost advantages they can offer if they choose. We do not agree with Comsat's argument that decomposited rates would benefit only leased-channel customers. Comsat believes satellite-only rates cannot be applied to switched services now provided over a mix of cable and satellite facilities because the customer cannot choose its particular medium. Decomposited rates, however, would allow an entrant to initiate a cable-only or satellite-only, switched service and to offer its users lower rates or more suitable technical characteristics.

91. Those opposed to changes in our *Authorized User* policy liken Comsat's role in INTELSAT to that of a wholesaler of international satellite circuits and argue that our decision here will allow Comsat to use its wholesale monopoly to gain an unfair competitive advantage in the end-user or retail market. We find this argument unpersuasive. The IRCs argue that Comsat derives essentially three benefits from its role in INTELSAT which it can turn to anticompetitive ends. First, because Comsat obtains its space segment from INTELSAT at a privileged rate, the carriers believe it can offer service to end users at a rate lower than any they can afford to offer and that Comsat can in this way apply its monopoly wholesale power to the retail market in violation of the Sherman Act, 15 U.S.C. 2 (1976). Second, they maintain that Comsat can control its tariff rates so as to offer higher rates on

²⁹ Without our involvement in artificially allocating traffic to Comsat under our *Authorized User* policy, United States' use of the international satellite system may have been substantially lower than it is today.

³⁰ In connection with the Comsat Rate Case, Communications Satellite Corporation, 56 FCC 2d 1101 (1975), where we found Comsat's rates too high, we required the IRCs and AT&T to "pass through" to users the savings they would realize from the reduction in Comsat rates we there ordered. See *id.* at 1186-7. See also *American Telephone and Telegraph Company, et al.*, 56 FCC 2d 821 (1975). In response, AT&T reduced its rates for overseas leased-channel and MTS services and the IRCs reduced their rates for telex and leased-channel services.

³¹ For example, satellite technology allows very wide bandwidth and is thus particularly well-suited for use in high-speed data transmissions. Satellites are more flexible since they provide simultaneous access to all countries operating with the satellite. Cable circuits, on the other hand, are generally recognized as more useful for certain other types of computer communications.

routes where there are no competing facilities and lower rates on routes where there are alternatives. Third, the IRCs argue that because of Comsat's role as the U.S. representative to INTELSAT it has access to possibly proprietary information from other U.S. carriers on their plans and to insider information about INTELSAT's own plans. This they believe will unfairly assist Comsat in developing services to offer users.

92. We find that while the IRCs have some ground for apprehension, their fears are overstated. Furthermore, there are regulatory tools at our disposal, short of the old *Authorized User* measures, to address these three potential problem areas. Our new policy provides that Comsat must offer basic transmission capacity through its World Systems Division at the same rate to non-carriers as it offers it to carriers. See *Comsat Structure*, FCC 82-372, — FCC 2d — (adopted August 5, 1982). Further, if it elects to become an international carrier, it must offer satellite service to its carrier subsidiary at the same rates at which it offers service to other carriers. Moreover, Comsat is fully subject to Sections 201-205 of the Communications Act and is required to file just and reasonable rates. It is subject to the antitrust laws as well. As a result, any rate Comsat may file pursuant to our policy will be fully reviewable under the Act and other applicable law.

93. The fundamental fear of the IRCs is that by virtue of its position as the sole supplier of international space segment Comsat will have both the ability and the incentive to engage in predatory pricing in the end-user market. The IRCs believe that Comsat will be able to use its monopoly to offer satellite circuits to the public at rates lower than those which it offers to retail-carrier customers. To illustrate its concern, ITTWC notes that Comsat recently bid to DoD a rate at retail for 1.544 mbps (megabits per second) service between Hawaii and Guam of \$90,900 per whole circuit, per month, at the same time it quoted ITTWC a rate at the wholesale level of \$183,200 per whole circuit, per month.³² We understand ITTWC's

concern that differential pricing of the sort it alleges would make it impossible for ITTWC to compete. We believe, however, that our modified policy requiring Comsat to tariff its rates for the space segment, and to take such services itself under tariff should it become an end-to-end service provider, will prevent any price squeeze such as ITTWC fears. Comsat's tariffs are subject to scrutiny under the Communications Act. We note, for example, that Section 202(a) of the Act bars unfair discrimination.

94. The IRCs are also concerned that Comsat will be able to extract its profit from providing the INTELSAT space segment and could thus afford to take little or no profit at the end-user level. We note that under our new policy Comsat must offer services to all users on the same terms and conditions. Should Comsat offer end-to-end services to the public its carrier subsidiary, like any other user, would be required to obtain earth-station service and the space segment from its World Systems Division at tariffed rates. Any rates which Comsat's carrier affiliate might file will be subject to Sections 201-205 of the Communications Act. Furthermore, under the separate-subsidary requirement of our *Comsat Structure* decision, only Comsat's INTELSAT-related investment may be used in developing its rates for INTELSAT services. Furthermore, the separate-subsidary requirement will facilitate our monitoring of Comsat's performance and allowing us to take any necessary corrective action.

95. We also find unpersuasive the IRCs argument that our policy violates the Sherman Act because it would allow Comsat, a wholesale monopolist, to compete with the IRCs for retail services. The IRCs argue that our policy offends the Sherman Act because they believe it will allow Comsat to extend its wholesale monopoly to the retail market. We disagree. The mere fact that we may authorize Comsat to compete with the IRCs will not allow it to monopolize the retail market and does not violate the Sherman Act. Our modified policy does not authorize Comsat to monopolize or to engage in any other unlawful conduct. It merely empowers Comsat to offer basic satellite transmission capacity to non-carrier users upon fair and reasonable terms and to seek authorization as an international communications common

carrier. In either instance, Comsat will be fully subject to the Communications Act and to the antitrust laws. We find also without merit the IRCs' argument that we are required to apply the antitrust laws mechanically to forbid any proposed action which might place an entity in a position to attempt to violate those laws. In *United States v. FCC*, 652 F.2d 72 (D.C. Cir. en banc 1980), a review of our authorization in *Satellite Business Systems, Inc.*, 62 FCC 2d 997, *recon. denied*, 64 FCC 2d 872 (1977), the Court of Appeals upheld our decision to allow Comsat and International Business Machines, Inc., to participate in a joint venture with Aetna Casualty and Surety Company to build and operate a domestic communications satellite system. In so doing, the court found that the effect of the antitrust laws is only one element we must consider in reaching our public interest finding. *United States v. FCC* at 88. The court specifically upheld as reasonable our finding that the combination of Comsat and IBM was unlikely to have an adverse effect upon competition but found that, even if it did, the benefit of introducing a well-financed competitor into the domestic-satellite market would outweigh those detriments. *See id.* at 106. In the instant matter, we believe that a policy broadening the market Comsat may serve will not itself produce an undue negative effect upon competition in the provision of international services.

96. The IRCs also argue that our policy is unlawful because they believe it will allow Comsat to engage in what ITTWC has characterized as "Hi-Lo" price discrimination. ITTWC argues that Comsat will be able to recast its current distance-insensitive tariffs to charge higher rates on routes where there are no cable or other facilities and to charge lower rates on routes where there are competing facilities. ITTWC further argues that our *Comsat Study* order even "encouraged" Comsat to engage in such discriminatory pricing. *See ITTWC Comments* at p. 26.³³ We do not agree with ITTWC's argument, or its characterization of the *Comsat Study*. Should Comsat seek to become an international carrier, it will no doubt be required to compete with the cable carriers for customers on routes where

³² On June 8, 1982, ITTWC filed a motion requesting us to take official notice of the record in CC Dockets Nos. 81-353, 354, 355 and 356, the proceedings examining the Hawaii-Guam matter, or otherwise to incorporate that record into the record of this proceeding. On June 22, 1982, Comsat filed its response to the ITTWC motion opposing the relief requested. As we indicated above, *see n. 2, supra*, in response to the WUI pleading seeking to supplement this proceeding, we have taken CC Dockets Nos. 81-353 to 356 under review. We note that Comsat has requested leave to withdraw the applications at issue in that proceeding and that has

taken exception to the ALJ's decision. We therefore believe it would be inappropriate to incorporate the record of CC Docket 81-353 to 356 on the initial decision into this record until we have had an opportunity to review it. We shall, therefore, deny ITTWC's request insofar as it seeks incorporation.

³³ ITTWC there quotes from paras. 483 and 492 of our *Comsat Study*, *see* 77 FCC 2d at 751 and 754-5, and suggests that, taken together, our language constitutes an encouragement to engage in discriminatory pricing. These statements do not constitute an invitation to violate the antitrust laws. They merely express the benefits we hope to achieve by increasing competition between the satellite and cable mediums.

both types of facilities are available. We do not believe, however, that this necessarily presupposes that Comsat would file unjustly discriminatory rates in violation of the Communications Act or of Section 2 of the Sherman Act. Additionally, should this occur, we are committed under Section 202(a) of the Communications Act to protect against unjust or unreasonable discrimination.

97. The fact that Comsat may elect to enter the end-user market, or that it may offer its services at rates lower than those in the existing carriers' tariffs, does not mean that Comsat is acting anticompetitively. One reason to introduce a viable competitor into the market is, in fact, to encourage competitive pricing. Similarly, the fact that Comsat changes its rate structure to meet competition from other carriers does not mean it is engaging in predatory pricing. Finally, there is no information in the record to indicate that there is sufficient traffic on those routes where Comsat would not face competition from other types of facilities to enable it to earn enough monopoly revenues to effectively cross subsidize competitive routes. The Third World routes cited as the source of such monopoly revenues tend to be low-density routes from which Comsat would be unlikely to be able to extract huge monopoly rents.

98. The *Comsat Study* does not lend support to the carriers' argument. It merely recognizes that competition may result in changes to Comsat's current tariffs as it seeks to respond to competition. Such competition will also likely require the existing carriers to change their tariffs as well. Our policy does not constitute encouragement of unjustly discriminatory pricing by either Comsat or existing carriers.

99. We also do not find compelling ITTWC's arguments concerning Comsat's access to information provided to it by the carriers and the IRC's related arguments concerning Comsat's access to INTELSAT information. ITTWC does not specify the kind of information about which it is concerned or how it believes Comsat would benefit from it. The only information available to Comsat from the international carriers is general estimates of circuit requirements. This information is also made available to other of ITTWC's competitors, including AT&T, in the course of developing projected use of INTELSAT facilities. With reference to Comsat's access to INTELSAT information, as the U.S. signatory to INTELSAT Comsat occupies a fiduciary relationship to those who use the INTELSAT system which governs its use

of INTELSAT information. It is held accountable for the performance of its fiduciary obligations. There is no evidence that Comsat will be incapable of carrying out its INTELSAT duties faithfully even if its subsidiary becomes an international carrier. In any event, the Communications Act gives us adequate power to protect the other carriers from abuses. Furthermore, in our companion *Comsat Structure* order we impose requirements upon Comsat which should protect against any potential abuse of its access to INTELSAT information. In our *Comsat Study* we noted several types of information to which Comsat has access by virtue of its role in INTELSAT and from which it might benefit to the detriment of its competitors. See 77 FCC 2d at 648, para. 214. In the *Comsat Structure* order, we require Comsat to make available to the carriers and the public substantial amounts of this information.³⁴

D. Other Issues

100. The parties have also suggested other policy changes to accompany change of the *Authorized User* policy, in addition to abolition of prescribed-use formulas and the mandatory composite-rate policy discussed above. Among these are proposals requiring Comsat to unbundle its charges for earth-station and space-segment services, for modification of our existing earth-station ownership policy to permit carriers outside the ESOC consortium to own and operate their own earth stations, and direct economic, operational and informational access by the carriers to INTELSAT. Without these companion changes in policy, the carriers argue, they will be unable to compete with Comsat in providing service directly to end users. We do not agree with the parties that there is any

direct connection between our modified *Authorized User* policy and changes in earth-station policy or the carriers' proposals for direct access to INTELSAT.

101. Comsat now files one tariffed rate which covers the costs of providing both the space segment and earth-station services. The parties filing comments on this point are concerned that such bundled rates will give Comsat a competitive benefit should we decide to allow entities outside ESOC to own their own earth stations. If that should happen, the parties assert that they would not be able to compete with Comsat for through satellite-transmission service because they would be required to charge their customers twice for earth-station service—once for Comsat's charges and once to recover the costs of their own stations. As the parties appear to recognize there is no reason to require unbundling until such time as we decide whether entities other than ESOC may own their own earth stations. Thus, there is no necessary connection between our initiative here and immediate tariff unbundling. Accordingly, we decline to order such unbundling within this proceeding.

102. With respect to the earth-station-ownership question, we agree that the time has come to reexamine current policy to determine whether it continues to serve the public interest. We have this day, in a companion order, *Modification of Earth-Station Ownership and Operation Policy*, FCC 82-373, — FCC 2d — (adopted August 5, 1982), initiated such a comprehensive review.³⁵ While the question of who may own and operate U.S. earth stations is important, it is not inextricably tied up with our *Authorized User* policy. The fact that a carrier cannot offer its own earth-station services does not mean that it cannot compete with Comsat in providing service. So long as Comsat/ESOC makes earth-station facilities and services available to other carriers on the same, reasonable and nondiscriminatory terms as are available to the Comsat subsidiary, all

³⁴ See *Comsat Structure*, Rulemaking, *supra*. We are also setting up a mechanism whereby most INTELSAT Board of Governors documents will be made routinely available for examination. *Id.* at paras. 91-2. From these documents, the carriers should be able to form a relatively clear idea of INTELSAT developments and the areas of research it is pursuing. This knowledge should go a long way toward neutralizing any advantage Comsat may gain from its access to INTELSAT information. As further protection, we have also ordered Comsat to make available for public inspection the INTELSAT Data Handbook which contains a listing and description of all INTELSAT-funded research and development which is available for licensing to firms through INTELSAT signatories. *Id.* at 94-9. We have also required Comsat to make available a listing of the INTELSAT patents which are available for licensing to outside firms. Additionally, we have required Comsat to make available to the Commission the Comsat Data Catalogue which contains a listing and description of Comsat or ratepayer-funded research and development and a listing of Comsat-held patents which are available for licensing. *Id.* at paras. 103-4.

³⁵ Our current earth-station-ownership policy arose out of our consideration of Comsat's application for construction and operation of the Early Bird Satellite system. *Ownership and Operation of Earth Stations*, 5 FCC 2d 812 (1966). We intended this policy only as an interim solution and in 1969 instituted an inquiry looking toward development of permanent arrangements. *Earth Station Ownership and Operation*, 20 FCC 2d 735 (1969). However, after receiving comments from interested persons, we took no further formal action. The interim policy has thus continued until the present.

competitors will be on the same footing. We thus decline to take action on the request for modified earth-station-ownership authority at this time. We also note that the carriers have argued that Comsat may use its position in ESOC to gain a competitive advantage. We do not find any basis in the record before us to find such an advantage. If the carriers wish to pursue the argument, they are free to raise it in the earth-station-ownership inquiry.

103. Similarly, the carriers' request for direct economic, informational and operational access to INTELSAT is not a necessary predicate for the instant change in our *Authorized User* policy. We are not convinced that the carriers cannot compete with Comsat without the ability to bypass Comsat. The changes the carriers propose may have merit on their own terms, which our access inquiry initiated today will explore. *Direct Access to INTELSAT*, FCC 82-374, — FCC 2d — (adopted August 5, 1982). We believe, however, that they are not mandated by the policy changes we make in this proceeding. We have previously considered the carriers' arguments for direct informational and operational access to INTELSAT and found them unconvincing. In the *Comsat Study*, 77 FCC 2d at 722, we found that neither the INTELSAT nor INMARSAT agreements provide for attendance of non-signatories at meetings of these groups and that there was no basis for granting them "observer" status. In the comments here the parties add no new information warranting a change in this position.

104. The carriers have already raised their request for "cost-based" access to INTELSAT in a number of forms. See Petition by WUI for Declaratory Ruling, File No. I-S-P-7, filed June 25, 1980; see also NPRM in *Comsat Structure*, 81 FCC 2d 287 (1980). They have proposed various ways by which they believe we might grant the access they seek. The question of access is quite complex and should be examined in a proceeding addressed specifically to that question. We have today, in our companion access order, instituted a comprehensive inquiry looking into the relationships of the carriers to INTELSAT and the various proposals for "cost-based access" which they have offered. We do not agree that the carriers will be unable to compete with Comsat unless they can treat their satellite-circuit expenditures as capital outlays under a "cost-based" access plan. So long as Comsat makes satellite circuits available to the carriers at the same reasonable and nondiscriminatory rates it charges its carrier subsidiary, all

carriers should be on the same competitive footing. We are similarly unpersuaded by the carriers' arguments concerning Comsat's propensity to abuse its fiduciary relationship. We cannot assume in adopting new policies here that Comsat will violate the law. In any event, the structure changes we have required today in this proceeding and in *Comsat Structure* proceeding should be adequate to prevent or control abuses by Comsat.

105. In requesting informational access, the carriers argue that Comsat, as a Signatory to INTELSAT, has access to INTELSAT-generated technical information and inventions which provides it an extra benefit. As a result, the carriers argue that they will not be able to compete with Comsat unless they can attend INTELSAT meetings as "observers" and have access to INTELSAT documents. We note that we have previously denied WUI's argument for the same access as "observers." See para. 103, *supra*. With respect to access to INTELSAT information, we have already indicated that we shall take action to grant the carriers access to significant amounts of INTELSAT and INMARSAT information. See para. 99, *supra*. We thus decline at this time to grant the carriers' request for direct access to INTELSAT.

IV. Conclusion

106. We have decided to amend our 1966 *Authorized User* policy to permit non-carrier entities unrestricted access to Comsat's INTELSAT/INMARSAT basic transmission facilities. Comsat shall provide these facilities on the same terms and conditions that they are provided to carriers. Comsat is hereby ordered to file proposed amendments to its tariff FCC No. 101 to reflect its offering of basic transmission capacity as contemplated by this decision. We shall also permit Comsat the option of providing end-to-end service. Before Comsat may enter the end-to-end service market, it must obtain the appropriate authorizations and file tariffs as required under the Communications Act. As a condition to its service in the end-user market, Comsat must also comply with the requirements set forth in the *Comsat Structure* decision adopted today. See para. 5, *supra*. In our review of future Comsat applications, we shall consider specific issues related to a grant of the requested authorization. We do not propose, however, in acting upon applications to reexamine the overall public-interest questions we have decided in this proceeding.

107. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), 201-205,

403, 404 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 403, 404 and 410 (1976), and Sections 102, 201(c)(11) and 401 of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701, 721(c)(11) and 741 (1976), that the proposed, modified authorized-user policy in CC Docket No. 80-170, is as provided for above, made final.

108. It is further ordered, that Communications Satellite Corporation (Comsat) shall, within 60 days of the release of this Report and Order, file for appropriate amendments to its authorizations under Section 214 of the Communications Act to make available to all users basic satellite-transmission capacity at all United States satellite earth stations operating with the INTELSAT global satellite system and shall effect all necessary revisions to its Tariff FCC No. 101 to implement this new policy.

109. It is further ordered, that upon implementation of the corporate restructuring provided for in CC Docket No. 80-634, the *Comsat Structure* rulemaking, FCC 82-373, — FCC 2d — (adopted August 5, 1982), and in the instant policy statement, Comsat may file for all necessary amendments to its existing authorizations under Section 214 of the Communications Act, and to file for any additional such authorizations as will be necessary to provide communications services between the United States and overseas points.

110. It is further ordered, that international common carriers are free to file amendments to their tariffs to offer rates separately for communications services provided solely by means of cable facilities or solely by satellite facilities or to retain their current composited rates.

111. It is further ordered, that the request by Western Union International, Inc., for waiver of § 1.415(d) of the Commission's rules and regulations, 47 CFR 1.415(d) (1981), is denied and that its Motion to Supplement Record and all associated pleadings are dismissed.

112. It is further ordered, that the above-referenced Motion by ITT World Communications Inc. to incorporate the records of CC Dockets Nos. 81-353-356 into the record of this proceeding and all associated pleadings are denied.

113. It is further ordered, that the policies adopted herein are effective immediately.

114. It is further ordered, that CC Docket No. 80-170 is hereby terminated; and

115. It is further ordered, that the Secretary shall cause this Report and

Order to be published in the Federal Register.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix.—Summary of Comments

1. Communications Satellite Corporation (Comsat)

While it believes that the Commission has authority under the 1962 Act to permit Comsat to serve end users directly, Comsat points out the difficulties and undesirability of implementing the proposed changes in authorized user practices. It also believes that implementation of the Commission's proposed changes in circuit allocation and compositing policies is likely to be difficult, if not impossible. Further, Comsat states that there has been no demonstration that the same objectives sought in the Notice cannot be achieved through substantial reliance on already proven international policies and practices, perhaps with appropriate modifications to improve their effectiveness where necessary or desirable. Comsat notes that the Commission's policies stop at the edge of its jurisdiction and control and that foreign entities have their own sovereign laws and commercial practices which may disagree radically with U.S. policies and goals. Thus, Comsat believes that the Commission must recognize that international communications are two-way and require mutual accommodation. If foreign administrations and correspondents do not permit new entrants access in their countries on terms and conditions equivalent to those we in the U.S. grant such entities, new entrants will not be able to offer end-to-end services.

Comsat further observes that even if the U.S. pursued a unilateral course, foreign administrations or international bodies may decide ultimately not to concur in any U.S. efforts to broaden entry and competition in international telecommunications. Under these circumstances, managers of companies considering entry into international markets in response to initiatives such as those of the Commission, must weigh carefully their prospects for successful long-term entry.

In view of the problems the Commission has confronted in the past in initiating major international communications policy changes, Comsat believes that the Commission should defer its efforts to adopt and implement unilaterally the major policy initiatives proposed in the notice of this proceeding until it can reach agreement with the overseas entities.

Comsat states that it believes it would be better for it to continue to serve primarily as a carrier's carrier, providing service at international earth stations in accordance with present earth-station-ownership policies. Additionally, Comsat believes it should be able to deal on a non-discriminatory basis at international earth stations with all qualified entities providing end-user services, including an appropriately-structured subsidiary of the corporation which might provide end-user services. In this latter respect, Comsat would propose to place prime corporate responsibility for the provision of any end-user services upon Comsat General or a similarly-structured subsidiary. One exception, Comsat notes, is the international television service it is already authorized to provide. Other exceptions could involve service to meet a requirement of compelling public interest or one mandated by statute.

With respect to the further Commission proposals in its Notice to alter current compositing and circuit-allocation policies in hopes of achieving broader entry and competition in international markets, Comsat asserts that implementation will be difficult if not impossible because of a number of practical impediments, including the likely negative reaction of foreign entities. According to Comsat, there is substantial reason to believe that the existing industry and market structure and international environment may make implementation of the Commission's circuit allocation and decompositing proposals detrimental to consumers rather than beneficial.

In its reply comments, Comsat reiterates its view that the Commission's proposal for stimulating intermodal competition is unrealistic, since foreign entities are opposed to such competition and AT&T (the dominant carrier) can readily influence customers to use cable rather than satellite facilities. Furthermore, Comsat opposes the proposal for cost-based access to Intelsat and notes that it is beyond the scope of this proceeding. Comsat restates its opposition to removal of prescribed-use formulas and permitting decompositing of rates. If Comsat loses traffic, it states that its voice as U.S. representative in INTELSAT will decrease because voting and ownership percentages are based on U.S. usage. In light of the proven benefits resulting from the Commission's Current policies and practices, Comsat questions the appropriateness of such a major change based on nothing more than theories regarding what consumers might do, or what the result might be if they had a greater voice in selecting the underlying

transmission medium. According to Comsat, the proposed policy changes will not work effectively or have any significant beneficial impact upon consumers, particularly with respect to switched services which constitute approximately 90 percent of the international communications business.

2. American Telephone and Telegraph Company (AT&T)

AT&T asserts that while it believes the Satellite Act requires that the changes in the *Authorized User* policy the Commission has proposed be made by Congress, it recognizes the Commission's view that it has the power to do so and, therefore, offers comments regarding the proposed changes. AT&T argues that regardless of whether the proposed policy changes are effective by legislative action or Commission action, they must be accompanied by the following additional policies: (a) A carrier should have the flexibility to establish its rates either on a composite or on a non-composite basis, depending upon marketplace conditions; (b) the proposed policies permitting marketplace forces to influence facility-planning decisions should lead to a lessening of Commission involvement in facility authorizations; (c) in recognition of its duty to regulate for the purpose of national defense, the Commission should continue to consider any special needs for national defense or security in acting upon facility authorizations; (d) the injection of competition in international telecommunications must be accompanied by prompt Commission action to establish parity between access cost burdens and jurisdictional separations treatment for international MTS and services competitive therewith; and (e) Commission decisions creating a competitive environment must be accompanied by other actions involving, at a minimum, changes in Comsat's corporate structure establishment of procedures for all carriers to have nondiscriminatory access to INTELSAT, and reconsideration of earth station ownership policies.

In its reply comments AT&T generally reiterates its previous arguments but states that it believes there is no need for the carriers to have cost-based access to INTELSAT if Comsat charges the carriers and its retail entity equal rates. Also, AT&T argues against requiring Comsat to unbundle its tariff charges, but supports the proposal for structural corporate changes. AT&T states that, contrary to Comsat's assertions, it will not favor cable over satellite and does not propose to

decomposite rates for its overseas MTS. AT&T again argues that for these competitive policies to succeed, the Commission should get out of the facility-planning process.

3. ITT World Communications Inc. (ITTWC)

ITTWC, in opposing the proposal, comments that having played a vital role in the government's development of Comsat as a thriving wholesaler monopolist, the Commission now invites Comsat into the competitive retail market, without meaningful recognition that the Commission is not writing on a clean slate. Congress by the Satellite Act has banned Comsat from competing with the carriers to serve the public directly. Also, since the Commission concedes that it would be patently unfair to allow Comsat to obtain a competitive advantage in the retail market by virtue of its position as a monopoly wholesaler of the international space segment, ITTWC believes that the Commission's proposals will result in defeating the competition it seeks to promote unless the Commission faces up to the monopoly structure resulting from past governmental actions. Since Comsat Global's identical charges to the carriers and noncarrier users would contain a substantial return element, the other carriers would have to treat those Comsat charges as an expense item which they would have to recover dollar-for-dollar before realizing one penny of profit. ITTWC maintains that the Commission is quick to advocate competition when it would be in Comsat's interest, but that it is loath to expose Comsat to competition. Thus, according to ITTWC the Commission's proposals are wrong as a matter of law and inherently unfair. Also, ITTWC states that the proposals will visit upon the IRCs severe anticompetitive injury which is impermissible under the antitrust laws. ITTWC contends that competition from Comsat could divert about 65-70 percent of its leased-channel revenues, or over \$20 million. While large users might temporarily benefit from direct service from Comsat, this diversion of IRC revenues would result in the majority of users paying higher rates for service. Moreover, if the Commission wishes even a semblance of meaningful competition while affording Comsat some retail role, it would have to adopt conditions more realistic than those presently proposed. Such conditions should enable other carriers to obtain INTELSAT space-segment capacity on the same economic terms enjoyed by Comsat; abrogate the Comsat dominated ESOC (Earth Station

Ownership Committee) consortium; allow competing carriers to establish their own separate earth stations or otherwise obtain earth station capacity on the basis of need; engender meaningful separation between the Comsat wholesale monopoly and its competitive retail operations; and assure that all competing carriers and media have an equal opportunity to appeal to marketplace forces, unhampered by unnecessary regulatory restraints. Finally, ITTWC supports elimination of prescribed-use formulas and institution of optional composite pricing.

In its reply comments, ITTWC repeats its prior arguments and emphasizes its stance that Comsat can be allowed to compete with the international carriers only if the carriers are granted cost-based access to INTELSAT facilities. ITTWC maintains that the proposed structural separation is not sufficient to prevent Comsat from engaging in anticompetitive cross-subsidization of its competitive retail services by its monopoly service.

4. Western Union International, Inc. (WUI)

WUI states that by its present rulemaking the Commission is attempting to destroy the intent of Congress in the Satellite Act to retain the competitive structure of U.S. telecommunications "by placing Comsat in a wholesaler role as a purveyor of satellite channels to the international carriers." WUI argues that the Commission has not met the burden in its proposal to reverse its previous *Authorized User* decision. WUI contends that introducing Comsat into the competitive international market is based upon a misdirected view of the law and of the current status of the telecommunications industry.

Also, maintains WUI, in addition to reversing the Satellite Act, the Commission's proposed policy is contrary to the federal antitrust laws, which were made "explicitly applicable" to Comsat in the 1962 Satellite Act. WUI states that the Commission has failed to weigh the anticompetitive implications of allowing Comsat to be a retailer and that creation of the separate Comsat subsidiary will not prevent it from engaging in concerted corporate anticompetitive conduct. While approving elimination of the prescribed-use formula, WUI asks us also to grant its separate petition for a declaratory ruling giving the carriers direct economic, operational and informational access to INTELSAT, as well as independent access to U.S. INTELSAT earth stations if Comsat is authorized to provide retail services.

In its reply comments, WUI continues to argue for maintenance of the status quo and supports NTIA's requests for another round of comments and oral argument before the Commission. WUI calls for cost-based access to INTELSAT prior to Comsat's entry. WUI contends that if Comsat is permitted to "cream skim" leased-channel revenues, the IRCs' ability to meet the existing needs of their customers will be impaired.

5. RCA Global Communications, Inc. (RCAGC)

RCAGC declares that the proposals to permit Comsat to serve anyone and to create a separate Comsat subsidiary are neither legal nor wise. RCAGC observes that in 1966 the Commission concluded that the Satellite Act's basic concept for Comsat was that of a carrier's carrier. Now, the Commission has decided that its *Authorized User* decision was wrong and that the Commission has for 14 years been enforcing an illegal policy. This is extraordinary, according to RCAGC, because the Commission, in changing its mind, relies almost solely on the words of the Act—words which have remained unchanged since their enactment in 1962. Not only the 1962 Act, states RCAGC, but also the federal antitrust laws prohibit, as a matter of law, the Commission's authorizing Comsat to provide satellite facilities and services to end users. Moreover, such direct services would not be in the public interest since Comsat could, through cream-skimming, jeopardize the continued viability of the international carriers' leased-channel services. RCAGC maintains that almost all of its leased-channel customers will shift to Comsat and that RCAGC will lose \$2.7 million. RCAGC believes that a loss of that magnitude will adversely affect its ability to provide leased-channel services, which are at present only marginally profitable. Also RCAGC claims that Comsat will compete in the telex market to the detriment of users on small-volume routes.

Similarly, argues RCAGC, the intent and spirit of the Satellite Act preclude the authorization of a separate Comsat retail subsidiary. Since the primary role of Comsat is to fulfill its statutory responsibilities under the Satellite Act, the creation of a Comsat retail subsidiary would significantly increase the danger of conflicts between Comsat's statutory responsibilities and its competitive activities. On the other hand, RCAGC supports the proposal to eliminate the current satellite/cable circuit-loading requirement, since this would remove burdensome, costly regulation. It would also support

requiring Comsat to offer space segment-only tariffs. However, a far better course, according to RCAGC, would be for the Commission to allow the international carriers cost-based access to INTELSAT satellite facilities. Such access, according to RCAGC, is absolutely necessary if the carriers are to compete with Comsat on a basis that will serve the public interest.

In its reply RCAGC restates its positions and notes that savings for leased-channel users is only for the U.S.-provided half-circuit since foreign entities now impose higher charges for their half of the circuit—RCAGC compares its charge of \$4140 per month for 56 kilobit half circuit to its foreign correspondents' charge of \$7950-10,460. Regardless of its decision on Comsat's entry, RCAGC, maintains that the Commission should eliminate satellite-usage requirements for carriers.

6. TRT Telecommunications Corporation (TRT)

TRT argues that instead of emphasizing competition in this proceeding, the Commission should consider the dangerous, anticompetitive consequences to which its new policy will give rise. In this respect, TRT maintains that the Commission has a statutory duty to assure that IRC markets do not fall prey to anticompetitive conduct. However, TRT believes the Commission is embarking upon a course which will create precisely that dangerous situation. However, if the Commission elects to allow Comsat to enter the international satellite retail market, TRT believes it must allow the USISCs to obtain INTELSAT space-segment access at the same cost that Comsat pays. As for the proposal that Comsat be required to create a separate subsidiary for retail activities, TRT states that this scheme is flawed because there is no incentive for Comsat to reduce its monopoly wholesale charges. To the contrary, argues TRT, Comsat would have an irresistible incentive to make its own wholesale markup from INTELSAT's charges large enough to assure that its wholesale and retail revenues combined would meet its overall corporate goals, irrespective of whether its retail revenues covered its costs. Thus, according to TRT, the separate subsidiary requirements will not prevent Comsat from engaging in anticompetitive practices.

In its reply TRT states that the IRCs' present service meets needs of the public and that other issues, such as cost-based access to INTELSAT and carrier ownership of earth stations, must be decided prior to permitting Comsat's

entry. TRT argues that the proposed structural separation is insufficient to guard against real harm from Comsat's ability to subsidize its competitive retail services from its monopoly service revenues.

7. Hawaiian Telephone Company (HTC)

HTC believes that the proposed change directly contravenes the Satellite Act, that it will have a significant adverse impact on the U.S. carriers and that it cannot be adequately considered in isolation from WUI's petition for a declaratory ruling concerning carrier access to INTELSAT and a new rulemaking on independent carrier earth-station ownership. If these changes are made, HTC argues that the U.S. delegation to INTELSAT will consist of the retail carriers, including the Comsat subsidiary, in proportion to their use of INTELSAT circuits. Thus, the relationship of the carriers to Comsat would be similar to the current relationship of Comsat to INTELSAT. The carriers would then have informational access to and representation at INTELSAT. HTC states that the retail carriers should have access to INTELSAT on a "cost pass-through basis." HTC states that either a long-term capital lease with a maintenance charge or an indefeasible right of user (IRU) arrangement with a maintenance fee (similar to the carriers' interest in overseas cables) would be acceptable. Also, HTC believes that the individual carriers should be allowed to own earth stations or that the existing ESOC arrangement should be modified to provide that Comsat's representation on the earth station ownership committee will be based solely on Comsat's proportionate use of a particular earth station. HTC believes that Comsat's World Systems Division should not have any earth-station-ownership interest.

Since all of these proposals are interrelated and cannot be effectively treated in separate proceedings, HTC believes that the Commission must undertake a single, comprehensive review of all the issues raised. As a result of this review, HTC claims that the Commission should return Comsat to its statutory role of a carrier's carrier, while devising other means to create effective competition.

In its reply HTC reiterates its positions opposing the proposed changes and restates the list of conditions it believes should be placed upon Comsat's entry. HTC also calls for Comsat to divest its existing retail operations.

8. American Satellite Company (ASC)

ASC argues that Comsat should not be permitted to compete with other carriers so long as Comsat has the advantage of its unique position as the monopoly wholesaler of INTELSAT space segment. However, ASC states that it would endorse the Commission's proposal for competitive entry so long as it is conditioned upon equal carrier access to INTELSAT facilities.

ASC also seeks clarification as to which carriers would be authorized to obtain INTELSAT space segment from Comsat's World Systems Division (WSD) in order to compete with Comsat's retail subsidiary. If the Commission suggests that it might limit access only to international service carriers, ASC objects to excluding other carriers, like itself, which are interested in providing international satellite communications services. ASC proposes that the Commission require the WSD to tariff rates for INTELSAT space segment separately from earth-station services so that carriers competing with the Comsat subsidiary in the retail market can build their own earth stations and will not be limited to the present ESOC structure. To eliminate what it characterizes as the Comsat subsidiary's unfair advantage in the retail market and to maximize competition, ASC proposes that the Commission grant non-ESOC carriers access to the existing ESOC earth stations upon the same terms as those available to Comsat and the other ESOC members.

In its reply ASC repeats its proposals to condition Comsat's entry and argues that Comsat's WSD should not be allowed to serve non-carriers. ASC also supports NTIA's proposal for granting to carriers IRU access to INTELSAT.

9. Southern Pacific Communications Corporation (SPCC)

SPCC submitted a letter merely indicating its interest in the proceedings, and did not file reply comments.

10. National Telecommunications and Information Administration (NTIA)

NTIA asserts that the issues raised by the Commission's NPRM are extremely complex, and that a "substantial change in the Commission's *Authorized User* policy would cause a major shift in the structure of the U.S. international telecommunications industry, a shift considerably more significant than merely introducing a new competitor." NTIA states that it supports the entry of Comsat into the retail marketplace but that it sees "serious problems likely to be associated with that entry." To deal with these potential problems, NTIA

recommends that Comsat provide retail services only through a fully-separated subsidiary, that carriers be authorized "equitable access" to INTELSAT facilities and that rules be established to maximize competition among carriers, including the Comsat subsidiary. Specifically, NTIA supports the authorization of Comsat to supply international telecommunications services but only upon the condition that the Commission adopt the following six requirements: (a) That Comsat's direct service be provided by a completely separate subsidiary; (b) that all carriers competing with Comsat be permitted to obtain investment-based non-discriminatory access to INTELSAT facilities to allow them to compete with Comsat; (c) that all carriers be provided access to INTELSAT documents in order to allow them to compete fairly; (d) that the Commission permit the carriers to offer different cable and satellite rates depending upon the transmission medium employed, and require Comsat to change its uniform tariff for service from all earth stations; (e) that competing carriers be permitted to own and operate INTELSAT earth stations, where technically feasible; and (f) that the Commission discontinue its prescribed satellite loading requirements.

NTIA agrees with the Commission that Congress never intended the Satellite Act to limit Comsat solely to the role of a carrier's carrier. NTIA also agrees with the Commission that Comsat's offering of INTELSAT service on a retail basis is not inconsistent with Comsat's statutory mission. Observing that the state of the art of communications satellite technology has changed dramatically since the Satellite Act was passed, NTIA argues that, given the changed service and technological environment, it is well within the Commission's discretion to adjust Comsat's status to fit current realities.

While there are significant benefits which it believes may stem from Comsat's provision of service directly to the public, NTIA believes there are two major detrimental impacts which could also arise: (1) The possibility of cross-subsidization; and (2) the potential for anticompetitive activities resulting from Comsat's monopoly access to INTELSAT. NTIA believes that the Commission's policy change should include safeguards against those detrimental impacts such as the creation of a separate competitive subsidiary to carry on end-to-end services and the granting to the carriers of some form of equitable access to the INTELSAT

system. If these safeguards are adopted, NTIA believes the Commission should permit Comsat to enter the retail marketplace.

In its reply comments NTIA emphasizes that the safeguards it recommended must be made pre-conditions to Comsat's entry in order to prevent anticompetitive actions. NTIA argues that the unbundling remedy proposed by the Department of Justice (DOJ) is not, by itself, enough—although it supports DOJ's proposal to require Comsat to unbundle its rates. NTIA is especially concerned that Comsat will be able to use its deep pocket for predatory pricing of its retail services unless the conditions NTIA proposes are adopted. Finally, NTIA supports elimination of prescribed satellite-use formulas and institution of voluntary rate decompositing.

11. Department of Defense (DoD)

DoD reiterates its request in its petition for declaratory ruling that government agencies be granted authorized user status. DoD states that its filing in the matter contained an exhaustive and thorough analysis that demonstrates that the statutory language of the 1962 Act imposes no limitation or restriction upon the U.S. government's ability to contract directly with Comsat for service. DoD maintains that the Commission's limitation upon the U.S. government's direct access to Comsat, set forth in the *Authorized User* decisions, has no basis either in the statutory language of the Satellite Act or its legislative history.

DoD submits that the U.S. government's status under the Satellite Act is a clearly separable issue of law which is unrelated to the numerous economic and policy issues otherwise to be addressed in this proceeding. Irrespective of the Commission's ultimate resolution of those issues related to Comsat's eligibility to serve non-carrier users directly, DoD maintains that the Commission must eliminate the improper and unlawful barrier it has established to direct dealings between the U.S. government and Comsat.

Commenting on some of the issues raised in the Commission's Notice herein, DoD states it is aware of no national security considerations which would militate against elimination of composite rates or prescribed-use formulas. Indeed, at this particular state of development in the international communications marketplace, DoD suggests that continuation of prescribed-use formulas might also be hindering technological advancement, particularly with respect to cable facilities.

However, the Commission should specifically condition the adoption of any such proposals upon the continued absence of detrimental impact upon national defense and security considerations.

In its reply, DoD restates its position that regardless of the Commission's decision with respect to other noncarrier users, government agencies are specifically authorized by the Satellite Act to take service directly from Comsat.

12. Department of Justice (DOJ)

DOJ favors allowing Comsat to provide international satellite communications services directly to the public and the U.S. government, but does not believe that it is "either necessary or appropriate" to require Comsat to offer such services through a fully-separated subsidiary as a means to avert cross-subsidization. While disagreeing with the Commission's proposal to deal with the cross-subsidy issue through requiring Comsat to form a subsidiary, DOJ suggests that other changes are necessary in order to achieve the maximum benefits of competition in the international telecommunications market. Specifically, DOJ proposes that the Commission permit independent ownership and operation of earth stations, and that it require Comsat to unbundle its earth-station and satellite services. DOJ believes that these proposals would, if adopted, substantially reduce Comsat's incentive and ability to cross-subsidize competitive services.

DOJ also agrees with the Commission's conclusion that it has broad discretion to determine who should be permitted to deal directly with Comsat, consistent with the public interest and the goals of the Satellite Act and the Communications Act. As a separate matter, DOJ argues that the U.S. government is specifically authorized by the Satellite Act to contract directly with Comsat for service. DOJ also agrees with the Commission that, as a matter of policy, it should permit Comsat to offer its services directly to the public because doing so will promote the public interest in increased competition and more efficient use of the satellite and cable facilities. In addition, DOJ supports termination of the Commission's composite rate and proportionate-fill policies which have inhibited competition between satellite and cable technologies. According to DOJ, the proposals in the NPRM, if adopted, will permit the entry of a major competitor

which has the capability and incentive to exploit international satellite services. Moreover, DOJ believes that Comsat's entry into the retail market, and the provision of separate tariffs based upon the respective costs of satellite and cable promise to bring substantial benefits to consumers of international communications services. DOT believes that by allowing Comsat and the U.S. international service carriers to charge consumers separate rates based on satellite costs would make the cost savings accruing from the use of satellite technology directly available to the public, thereby allowing substantial rate reductions.

In its reply DOJ reiterates its support for the Commission's proposals and the remedies it proposed to prevent Comsat from engaging in anticompetitive practices. DOJ refutes the IRC arguments against Comsat's entry on the grounds that, on balance, it believes the benefits of entry outweigh the potential for harm. DOJ also supports independent ownership of earth stations and the unbundling of Comsat's charges as a means of insuring against anticompetitive conduct. As for Comsat's comments about the reluctance of foreign correspondents to deal with new entrants, DOJ states that Comsat's status in INTELSAT will assure it access to foreign correspondents.

13. Aeronautical Radio, Inc. (ARINC)

ARINC strongly supports the Commission's conclusion that the Satellite Act permits it to grant noncarriers direct access to Comsat services. ARINC believes the Commission should change its policy because allowing direct access to Comsat's services will enable ARINC to fulfill its obligations to the international air transport community and to the public and allow it to provide service in the most effective manner possible. According to ARINC, the Commission's proposal in this rulemaking would permit users to avoid the added cost, complexity and inefficiency of obtaining necessary satellite facilities, if available at all, through carriers other than Comsat.

ARINC observes that in the 1966 *Authorized User* decision the Commission was concerned that a significant diversion of leased-channel traffic from the IRCs could completely wipe out their earnings, and, thus, decided that the carriers should be insulated from competitive forces. Since then, ARINC believes events indicate that the validity of the Commission's conclusion was questionable and that the Commission's policy has forced end

users to face higher costs for overseas circuits than they otherwise would. Also, ARINC believes that the Commission's earlier decision to protect the IRCs has denied the public the benefits of competition between cable and satellite services. ARINC maintains that there is no indication that such competition would have harmed the IRCs. Under present market conditions, argues ARINC, there is no longer any reason for the Commission artificially to restrict access to Comsat's services.

ARINC also states that the addition of a competitor with Comsat's experience in the field of satellite technology is bound to inure to the advantage of consumers, particularly in regard to pricing, innovation in service, and expansion in availability of satellite communications. First, ARINC believes that the proposed Comsat retail entity would have a strong increased incentive to reduce prices and increase satellite circuit demand *vis-a-vis* cable demand; and, second, that given the Commission's proposal to reconsider its proportionate-fill formulas and composite-rate policies, Comsat and other carriers may be able to pass through the full economies of satellite technology to the public.

In its reply ARINC restates its prior arguments and attempts to refute the IRCs' contention that they will lose almost all of their leased-channel revenues to Comsat. In any event, ARINC argues that if the IRCs are correct, they are performing no economically worthwhile function. ARINC calls the IRC arguments in opposition to the Commission's proposal speculative and agrees with DOJ that the Commission has ample powers to control any predatory pricing by Comsat.

14. Societe Internationale des Telecommunications Aeronautiques (SITA)

SITA is a nonprofit, cooperative organization created by the airline community to meet its telecommunications service needs and to provide airlines with a specialized, dedicated, non-government packet-switched network. For its new advanced network (Data Transport Network), SITA states that it needs reasonably priced, wideband international satellite data circuits, not now routinely available from the IRCs, and that, where such circuits are available, the rates therefore do not reflect the cost savings inherent in wideband technology. Because the rates charged by the IRCs for satellite circuits include costs associated with unused terrestrial systems, they allegedly are likely to

offer SITA little, if any, cost savings or new services. SITA therefore states that it wholeheartedly supports the Commission's proposals.

15. Dow Jones and Company (Dow Jones)

Dow Jones endorses the tentative intentions of the Notice in this proceeding because it believes it is readily apparent that the existing *Authorized User* policies "severely impede the financial ability of news disseminators to apply satellite technologies in international operations." Dow Jones states that the high cost of international communications services as well as the failure of the IRCs to offer unique and innovative services designed to meet those users' needs have effectively blocked the extension into the international market of news-gathering and news-distribution techniques now commonly utilized domestically. Dow Jones believes that permitting Comsat to provide service directly to users and by abandoning past ratemaking practices of averaging costs of international satellite and cable services will significantly reduce the costs for international communications services. Dow Jones, therefore, believes that the international community will be able to enjoy the benefits produced by the broadened dissemination of news and information which the national community already enjoys. Dow Jones states that its successful experience with the low costs of domestic satellite services may serve as an example of what the future could allow on the international level if current policies are changed along the lines proposed by the Commission in this proceeding.

16. Securities Industry Automation Corporation (SIAC)

SIAC is a wholly-owned subsidiary of the New York and American Stock Exchanges and provides communications services on a cooperative basis to the securities industry. SIAC supports the Commission's proposals to remove artificial barriers to competition such as the *Authorized User* policy. SIAC points out that international communications have not experienced the innovations and lower prices the domestic market has enjoyed. SIAC believes that competition between the cable and the satellite is feasible in the leased-channel market and that it should be encouraged. However, SIAC notes that because the other half of the circuit is controlled by foreign entities who may not want such competition, there may be

a problem in implementing the policy changes.

17. American Communications Association (ACA)

ACA is a labor union representing a number of U.S. international communications workers. ACA argues that it does not believe Comsat should be authorized to provide service, either as a matter of law or as a matter of policy. ACA believes that Comsat's entry would have an adverse impact upon the viability of the existing carriers and that it will therefore adversely affect the wages, hours, conditions of work, health and welfare benefits, pension equities and job security of the workers employed by those carriers. Thus, the Commission's proposed action would seriously undermine the welfare of the work force and tip the balance toward the employers. Also, even if Comsat were required to offer channels to individuals and carriers at the same rates, ACA believes that the inevitable result would be the lessening of competition in violation of the Sherman Act. In conclusion, ACA opposes any change to the present policy.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination That *Euphorbia skottsbergii* var. *kalaaloana* ('Ewa Plains 'Akoko) Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the 'Ewa Plains 'akoko (*Euphorbia skottsbergii* Sherff var. *kalaaloana* Sherff) to be an Endangered species. This action is being taken because of extensive past and potential modification of this plant's only known range on the 'Ewa Plains, near Barbers Point, Oahu, Hawaii. The proposal seeks to provide protection to this species under the Endangered Species Act of 1973, as amended.

DATE: This rule becomes effective on September 23, 1982.

ADDRESS: Interested persons or organizations having questions concerning this action may address them to the Director (OES), U.S. Fish

and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION: The 'Ewa Plains 'akoko (*Euphorbia skottsbergii* var. *kalaaloana*) is a shrub known only from the 'Ewa Plains of Oahu, Hawaii, in the vicinity of Barbers Point. Another variety of the same species (*Euphorbia skottsbergii* var. *skottsbergii*), which formerly was found closer to the shoreline in the same vicinity, was last seen in 1932 and is presumed extinct. The 'Ewa area has been subject to varying levels of disturbance over the past several hundred years and presently supports predominantly non-native vegetation dominated by kiawe (*Prosopis*) and koa haole (*Leucaena*), with remnant populations of native species. Unless measures are instituted to provide for the conservation of this plant, continued habitat degradation is likely to result in its extinction in the wild. It is one of two known survivors of four plant taxa originally endemic to the 'Ewa Plains.

Background

Section 12 of the Endangered Species Act of 1973 (the Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director of the U.S. Fish and Wildlife Service published a notice the Federal Register (40 FR 27823) of his acceptance of the Smithsonian report as a petition under Section 4(c)(2) of the Act. The plants named in this petition were placed under review for addition to the list of endangered and threatened plants, and on June 16, 1976, the Director published a proposal (41 FR 24523) to list some 1,700 such taxa as Endangered. This proposal was based on the Smithsonian Institution's petition as well as comments and other information received by the Service. *Euphorbia skottsbergii* var. *kalaaloana* was thought to be extinct at the time of both the petition and the notice of review, and was included in both under that status, but was among the taxa proposed for listing as Endangered in 1976.

The Endangered Species Act Amendments of 1978 subsequently required that any proposal to list a species as Endangered or Threatened be

withdrawn unless made final within 2 years. A period of one year was allowed following passage of the Amendments on November 10, 1978, during which no proposals were to be withdrawn under this provision. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been the subject of final action.

Euphorbia skottsbergii var. *kalaaloana* was again proposed for Endangered status on September 2, 1980 (45 FR 58166), based on information available at the time of the 1976 proposal and information gathered between that time and the date of the proposal's withdrawal, as well as new information provided under contract by the Department of Botany of the University of Hawaii (Char and Balakrishnan, 1979).

Regulations establishing prohibitions and permit procedures for Endangered and Threatened plant species appear at 50 CFR Part 17.

The Department has determined that this is not a major rule and does not require the preparation of a regulatory impact analysis under Executive Order 12291. Because this rule was proposed before January 1, 1981, a determination of effects on small entities is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507).

Summary of Comments and Recommendations

A letter was sent to the Governor of the State of Hawaii on September 9, 1980, notifying him of the proposed rule listing *Euphorbia skottsbergii* var. *kalaaloana*. On September 16, 1980, notifications were sent to appropriate Federal agencies and other interested parties. The September 2, 1980, proposed rule invited all interested parties to submit factual reports or information that might contribute to the formulation of a final rule.

Comments were received from the Governor of Hawaii; the Department of the Army, Office of the Chief of Engineers; the Department of the Navy, Facilities Engineering Command; the U.S. Department of Agriculture, Forest Service; the Office of Biological Conservation of the Smithsonian Institution; and four private individuals.

All comments received in the period from September 2, 1980 to December 19, 1980, have been considered in formulating this final rule. The Governor

opposed listing of this taxon on the basis that the Army Corps of Engineers and the private developer involved at Barbers Point are presently making adequate provisions for its perpetuation through the proposed establishment of sanctuaries and of transplanted populations with in the 'Ewa Plains. He also cited the importance of the proposed deep-draft harbor to the people of Hawaii because of their heavy dependence on ocean transportation as a factor, stating that, "the listing of this plant will have a severe adverse economic and social impact on Hawaii."

Although the Service recognizes that private and governmental entities are presently involved in various activities aimed at ensuring the survival of the 'Ewa Plains 'akoko, it does not believe that the results of these efforts are yet conclusive. Presently available information, including that contained in comments summarized below, indicates a pattern of long-term decline and recent significant losses in this plant. Unless more effective means are applied to its conservation than have been heretofore, the Service believes it to be in danger of extinction throughout all of its range. The Service has conducted an informal consultation with the Army Corps of Engineers indicating that development of the harbor and dockside facilities is not likely to jeopardize the continued existence of the 'akoko, and thus would not be hindered by its listing.

Comments Concerning the Species' Status

All respondents, with the exception of the Governor and the Smithsonian Institution, which provided no information or recommendation, indicated that the status of the plant was such as to warrant listing as Endangered. The Navy originally recommended against listing, citing supposed abundance of the taxon at Barbers Point Naval Air Station. A survey of the station, however, conducted by the Service's Hawaii Area botanist and a Navy official, confirmed the Service's status report. Although subsequent surveys have confirmed the presence of more individuals of the species on the Naval Air Station than were indicated by the 1979 status report, the Navy no longer opposes the listing of this taxon.

The Army Corps of Engineers indicated that, "extinction throughout all or a significant portion of its range appears to be a real danger unless some protection status is afforded. We, therefore, fully support the proposed determination of Endangered status for *Euphorbia skottsbergii* var. *kalaeloana*."

In a memorandum dated September 29, 1980, transmitted by the Forest Service, their Pacific Islands Forester notes that, "development and land modification are rapidly causing fewer [sic] 'Ewa Plains 'akoko plants. A site with about 100 plants was bulldozed near the oil refinery a year ago. Additional plants on the west beach side of the harbor were cleared several weeks ago during quarrying operations. This included two AECOS experimental sites. Present estimates of plants around the harbor are between 500 and 1000 of an estimated 2,450 original plants 4 years ago."

In a letter dated September 25, 1980, Keith R. Woolliams, Director of Waimea Arboretum and Botanical Garden, indicated that a major sub-population of the 'akoko would shortly be bulldozed and that there were plans by the owner of the land involved to relocate 2000 plants from this site, but that he doubted the attempt would be successful because he knew of no provision for after-care and because the relocation was to be attempted at the worst time of year for transplanting.

Comments Regarding Present Recovery Efforts

The Governor noted that the James Campbell Estate, the major private landowner in the area in which the 'akoko occurs, had initiated propagation experiments as early as 1977 and 1978 and that some plants from these experiments are still alive in a nearby transplant site. He also stated that both the Campbell Estate and the Army Corps of Engineers are conducting studies regarding propagation, habitat, and population biology of the 'akoko.

The Forest Service's Pacific Islands Forester reports that, "an effort was made to transplant 469 plants in 1977 and 1978 by Kawahara Nursery and Garden Landscaping Company. Less than seven of the original plants are still alive in the nearby transplant site * * * Failure of transplanted plants to establish viable seedlings in the transplant site close to the ocean indicates the need to investigate habitat and population biology requirements of the plant * * * He further states that * * * the advanced 60-90 day notice of intention to list the plant is causing hasty transplant decisions to be made that could jeopardize Federal funding of the harbor." and that, "Several organizations are presently trying to transplant remaining 'akoko plants around the harbor—an effort known to cause heavy mortality in an already depleted gene pool—to guarantee no delay in the construction of the harbor."

Although the Service has not been able to confirm the figures provided by the Forest Service, information on file concerning transplants attempted in 1977 and 1978 by Kawahara Nursery and Landscaping indicate very low survival of transplanted individuals. Further transplant experiments undertaken by the Kawahara firm during 1979 were apparently unsuccessful, possibly as a result of inadequate after-care of the transplanted individuals.

The Army Corps of Engineers commented that:

In anticipation of formal listing and out of concern for the status of this rare plant, the Corps has initiated, by contract, a detailed investigation of the ecology and horticulture of *Euphorbia skottsbergii* var. *kalaeloana*. This study has been informally coordinated with area representatives of the FWS and is expected to yield valuable information regarding physical and biological constituent elements of the plant and ecological evaluations of present and potential habitat sites. Such information should facilitate the establishment of transplant and sanctuary sites and successful propagation of the species should these become necessary as a result of formal listing and the construction of the deep-draft harbor.

The Service believes that present conservation efforts aimed at maintaining the 'Ewa Plains 'akoko, while ultimately of use in developing management for this plant, do not yet effectively provide for its survival. In fact, some attempts at establishing protected populations by transplant may be actually contributing to the plant's decline. A coordinated conservation plan facilitated by this listing is believed vital to the plant's survival.

Comments Regarding the Appropriateness of Transplant as an Element in Recovery of the Species

The September 2, 1980, proposal stated that plans developed to ensure the continued existence of the 'akoko, "may include the establishment of new populations of this taxon in protected areas within the 'Ewa Plain as well as protection of existing populations on property presently under Federal control or acquired for this purpose." Dr. Clifford W. Smith, of the Department of Botany of the University of Hawaii, indicated that he did not support any plan to relocate the plant because, "This suggestion essentially accepts that if the deep-draft harbor proposal for the area is implemented the U.S. Government is prepared to support the deliberate eradication of the most significant population of this species in the wild."

As a general rule, it is the policy of the Service not to recommend

transplantation as a primary conservation measure for Endangered or Threatened plants. In the present case, transplant may be undertaken as a means of reintroducing the 'akoko into areas of its probably historic range from which it is now absent. It should be emphasized that transplant is envisioned as only one element in probable recovery efforts for this plant, which would also include protection for some existing populations. The Service also recognizes that any transplant should be undertaken only after a thorough investigation of the habitat requirements of the 'akoko, which are not presently well known, and use methods that have proven successful in establishing plants in the wild.

Dr. Gerald Carr, of the Department of Botany, University of Hawaii, expressed reservation concerning the eventual fate of transplanted populations of the 'akoko if development continues in the 'Ewa area. The Service appreciates this concern and intends that plans for the conservation of this plant include a means of permanently protecting representative populations within the 'Ewa Plains.

Both Mr. Woolliams and the Forest Service's Pacific Island Forester commented on the feasibility of methods of propagation and transplant and the probable need for some after-care of any possible transplants. Mr. Woolliams noted that, in his opinion, the easiest, cheapest, and most effective solution would be to fence off a portion of the area on which the plants presently occur and transplant plants from the surrounding area to within the enclosure. Although this may eventually prove feasible and effective, the Service does not believe that present information indicates that such an effort to increase local population density artificially would necessarily benefit the plant. If it is assumed that the plants exist in equilibrium with their habitat in those areas in which they presently occur and their numbers are limited by availability of suitable habitat and ability to colonize such habitat rather than an intrinsically low reproductive rate, it seems unlikely that an attempt to increase population density would be appropriate unless associated with some favorable alteration of habitat to support the greater density. At present, it is uncertain what kind of alteration, if any, might permit locally increased population density.

Comments Regarding the Designation of Critical Habitat

The September 2 proposal expressed the view of the Service that the overwhelmingly non-native vegetation

in which the 'akoko now occurs could not be said to be essential to its survival and thus that no Critical Habitat could be specified for this plant. The Army Corps of Engineers agreed with this view.

Dr. Gerald Carr, of the Department of Botany, University of Hawaii, agreed that very little remained of the native ecosystem of which the *Euphorbia* was originally a part, but suggested that some Critical Habitat be defined for the plant at some time so that it " * * * will have a refuge somewhere on the 'Ewa coral plains where it has some chance of survival. After all, this is the only place that the species has demonstrated its ability to survive."

The Service agrees that conservation of this taxon should be focused on its maintenance within the 'Ewa coral plain. It believes, however, that for the foreseeable future, this should be accomplished without a designation of Critical Habitat because the knowledge necessary to identify constituent elements critical to the survival of the plant is not available. Should such information become available at some future time, the Service will consider designation of Critical Habitat.

Conclusion

After a thorough review and consideration of all the available information, the Service has determined that *Euphorbia skottsbergii* Sherff var. *kalaaloana* Sherff is in danger of becoming extinct throughout all of its range. Section 4(a) of the Act (16 U.S.C. 1531 et seq.) and regulations promulgated to implement the listing provisions of the Act (45 FR 13010-13026, codified at 50 CFR Part 424) set out five general classes of factors to be considered in making any such determination. The Service has determined that *Euphorbia skottsbergii* var. *kalaaloana* is primarily affected by factors 1 and 5. All five factors as they apply to the status of *Euphorbia skottsbergii* var. *kalaaloana* are:

1. *Present or Threatened destruction, modification, or curtailment of habitat or range.* The precise natural range of this taxon is unknown, but probably did not go beyond the coralline plains of the 'Ewa area. The loss of native habitat within this area began with Polynesian settlement of the islands and has continued down to the present. This has been so thorough that no completely native habitat can be said to be present any longer. Documented loss of the predominantly non-native vegetation in which the *Euphorbia* now occurs, with concomitant loss of a significant number of *Euphorbia* plants has continued to the present.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Does not apply to this species.

3. *Disease or predation (including grazing).* None known.

4. *Inadequacy of existing regulatory mechanisms.* This taxon is not presently regulated.

5. *Other natural or manmade factors affecting continued existence.* Although the principal factor endangering this taxon is past and potential loss of habitat, it is possible that its reproductive success has been affected by decline of native pollinating insects. Competition from aggressive weedy species that now dominate vegetation in the area has also undoubtedly been a factor in its decline.

Critical Habitat

The Act defines Critical Habitat as:

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of [the] Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific area outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of [the] Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Section 4(a)(1) of the Act requires that, to the maximum extent prudent, Critical Habitat be specified for a species at the time it is proposed for listing as Endangered or Threatened.

No Critical Habitat was specified in the September 2, 1980 proposal because, "[The] species proposed for listing as Endangered no longer is found in a native habitat and, although it survives in non-native vegetation, the greatly altered ecosystem in which it occurs cannot reasonably be said to be essential to its conservation." The Service continues to believe that essential elements cannot presently be identified in the habitat occupied by the 'akoko. Should further study of its physical and biological requirements pursuant to a coordinated conservation plan, as described previously, identify areas deemed essential to its conservation, they may be designated as Critical Habitat.

Effects of This Rule

The Act and implementing regulations published in the Federal Register of June 24, 1977 set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. These

regulations are found at 50 CFR 17.61, and are summarized below.

With respect to *Euphorbia skottsbergii* var. *kalaeloana*, all prohibitions of Section 9(a) of the Act, as implemented by § 17.61, will apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell this species or offer it for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and § 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances.

Because *Euphorbia skottsbergii* var. *kalaeloana* is not presently traded commercially or exported, these prohibitions are not likely to have significant effects. Some imports and exports in the course of scientific research may have to be conducted under permit from the Service.

Section 7(a) of the Act also requires that Federal agencies carry out programs for the conservation of Endangered and Threatened species and that they ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species. A procedure is also established whereby particular Federal actions may be exempted from compliance with section 7(a). Provisions for interagency cooperation in complying with Section 7(a) of the Act are codified at 50 CFR Part 402. The present rule will allow the U.S. Army Corps of Engineers and the U.S. Navy's Barbers Point Naval Air Station to consult formally with the U.S. Fish and Wildlife Service concerning their activities in the Barbers Point area insofar as they might affect the 'Ewa Plains 'akoko, so that plans can be developed to ensure its continued existence. Such plans may include the establishment of new populations of this taxon in protected areas within the 'Ewa Plain as well as protection of existing populations on property presently under Federal control or acquired for this purpose. The present rule is not expected to significantly affect the harbor development or management of the Naval Air Station.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file at the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and

may be examined by appointment during regular business hours. This Assessment forms the basis for a decision that the present rule is not a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969.

Information Sources

U.S. Army Engineer District, Honolulu, Hawaii 1976. Barbers Point Harbor-Design Memorandum No. 1, Plan Formulation.
Char, W. P. and N. Balakrishnan 1979. 'Ewa Plains Botanical Survey. Department of Botany, University of Hawaii at Manoa.

Author

This rule is published under the authority contained in the Endangered Species Act of 1973, as amended (16

U.S.C. 1531 *et seq.*; 87 Stat. 884). The primary author of this proposed rule is Dr. John Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975).

List of Subjects in 50 CFR Part 17

Endangered and Threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended, as set forth below.

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, and species, the following plant taxon:

Species		Historic range	Status	When listed 118	Critical habitat	Special rule
Scientific name	Common name					
Euphorbiaceae—Spurge family: <i>Euphorbia skottsbergii</i> var. <i>kalaeloana</i> .	'Ewa Plains 'akoko.....	USA (HI).....	E.....		NA.....	NA.....

Dated: August 3, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-23010 Filed 8-23-82; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 2819-157]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce issues this notice to close the recreational fishery for salmon in the fishery conservation zone between Leadbetter Point, Washington, and the U.S.-Canada International Boundary (subarea A) at midnight on August 19, 1982. The Director of the Northwest Region, National Marine Fisheries Service, has determined that the recreational quota of 115,000 coho salmon for this subarea will be reached by that date. This action is necessary to ensure that quotas for coho salmon are not exceeded in 1982.

EFFECTIVE DATES: Closure of subarea A to recreational salmon fishing is effective from 2400 hours Pacific Daylight Time, August 19, 1982, until 2400 hours, Pacific Standard Time, December 31, 1982.

FOR FURTHER INFORMATION CONTACT:

H. A. Larkins (Director, Northwest Region, National Marine Fisheries Service), 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115; telephone 206-527-6150.

SUPPLEMENTARY INFORMATION:

Emergency regulations to implement a 1982 amendment of the fishery management plan (FMP) for the Commercial and Recreational Fisheries off the Coasts of Washington, Oregon, and California were published in the *Federal Register* (47 FR 21256) for the commercial fishery north of Cape Blanco, Oregon, and the coastwide recreational fisheries. These emergency regulations were effective on May 14, 1982, for a 45-day period and were extended for an additional 45 days on June 28 to be effective through August 11, 1982 (47 FR 28105). Final rules to implement the 1982 amendment became effective on August 12, 1982 (47 FR 35489).